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CONFIRMATION HEARINGS ON FEDERAL APPOINTMENTS

HEARINGS

BEFORE THE

COMMITTEE ON THE JUDICIARY UNITED STATES SENATE

ONE HUNDREDTH CONGRESS

SECOND SESSION

ON

CONFIRMATION HEARINGS ON APPOINTMENTS TO THE FEDERAL JUDICIARY AND THE DEPARTMENT OF JUSTICE

APRIL 21, MAY 16, JUNE 21, AND JULY 27, 1988

Part 6

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CONTENTS

THURSDAY, APRIL 21, 1988

STATEMENTS

Page

D'Amato, Hon. Alfonse M 2

TESTIMONY OF NOMINEES

Summit, Stuart A., to be U.S. circuit judge, U.S. Court of Appeals, Second Circuit 5

Roberto, Robert, Jr., to be U.S. district judge, Eastern District of New York 79

Levitt, Howard E., to be U.S. district judge, Eastern District of New York 125

QUESTIONNAIRES AND OTHER SUBMISSIONS

Leahy, Hon. Patrick J.:
- "U.S. Judge Retires, Gets Reagan Award; Meese Denies Trade Was Made With 2d Circuit's Kaufman," By Ruth Marcus and David Hoffman, Washington Post, September 19, 1987 7
- "Federal Bench Nominee To Be Quizzed on Law Firm," by George Archibald, Washington Times, April 20, 1988 16
- Letter from Stuart A. Summit to Carl E. Tuerk, Jr., dated April 26, 1985, re dispute with former law partners 21
- "Blacks; Judge; Appointments; Discrimination; Retirement," Newsday, July 4, 1987 82
- "Witness Links Basile to Mob, Arson," by Carolyn Colwell, Newsday, December 20, 1983 83
- "Cahn is Under Inquiry in Case Involving False Severence Pay," by Robert E. Tomasson, New York Times, April 23, 1976 84
- "Grand Jury Probing Severance Cahn OK'd," by Manny Topol and Bruce Lambert, Jr. 84
- "Ex-Client Testifies Against Lawyer," by Rita Ciolli 87
- Claim Form I—Refund of contributions to Nassau County Republican Committee and Town of Hampstead Republican Committee 132

Levitt, Howard E.:
- Response to questions 138
- Biography 207
- Questionnaire 208
- Letter from the American Bar Association 230
- Letter from the Association of the Bar of the City of New York 231

Roberto, Robert, Jr.:
- Response to questions 93
- Biography 183
- Questionnaire 184
- Letter from the American Bar Association 205
- Letter from the Association of the Bar of the City of New York 206

Summit, Stuart, A.:
- Response to questions 25
- Biography 144
- Questionnaire 145
- Letter from the American Bar Association 182

MONDAY, MAY 16, 1988

STATEMENTS

Page
Exon, Hon. J. James 233
Karnes, Hon. David 234
Smith, Hon. Virginia, Representative from Nebraska 235
Armstrong, Hon. William L 237
  Prepared statement 239
Wirth, Hon. Timothy E 241
Bentsen, Hon. Lloyd 243
Gramm, Hon. Phil 246
Hall, Hon. Ralph, Representative from Texas 246

TESTIMONY OF NOMINEES

Erickson, Hon. William H., to be U.S. district judge, District of Colorado 248
Lake, Simeon Timothy, III, to be U.S. district judge, Southern District of Texas 355
Schell, Hon. Richard A.: to be U.S. district judge, Eastern District of Texas 416
Cambridge, Hon. William G.: to be U.S. district judge, District of Nebraska 421

QUESTIONNAIRES AND OTHER SUBMISSIONS

Cambridge, Hon. William G.:
  Response to questions 424
  Biography 582
  Questionnaire 583
  Letter from the American Bar Association 604
Erickson, Hon. William H.:
  "The Unfulfilled Promise of *Miranda* v. *Arizona*," article in the American Criminal Law Review, fall of 1986 255
  Response to questions 269
  Biography 426
  Questionnaire 427
  Letter from the American Bar Association 498
Lake, Simeon Timothy, III:
  Response to questions 356, 365
  Biography 499
  Questionnaire 500
  Letter from the American Bar Association 540
Schell, Hon. Richard A.:
  Response to questions 418
  Biography 541
  Questionnaire 542
  Letter from the American Bar Association 581
Thurmond, Hon. Strom:
  Letter from Charles F. Brega, Esq., to Justice Erickson, dated April 20, 1988, re membership policy of Cherry Hills Country Club 253

TUESDAY, JUNE 21, 1988

STATEMENTS

Simon, Hon. Paul 607
Wilson, Hon. Pete 608
Heinz, Hon. John 609
Specter, Hon. Arlen 610

TESTIMONY OF NOMINEES

Smith, Hon. Fern M, to be U.S. district judge, Northern District of California 612
DuBois, Jan E., to be U.S. district judge, Eastern District of Pennsylvania 619
Summit, Stuart A., to be U.S. circuit judge, U.S. Court of Appeals, Second Circuit 716

WITNESS

Kreindler, Lee S., New York, NY 662

QUESTIONNAIRES AND OTHER SUBMISSIONS

Page

DuBois, Jan E.:
    Letter from the American Bar Association 622
    Biography 809
    Questionnaire 810
Kreindler, Lee S.:
    Testimony 662
    Prepared statement 675
        Exhibits 689
Supplementary statement of Lee S. Kreindler 723
Simon, Hon. Paul:
    Letters with enclosures re the nomination of Stuart Summit 624
    Letter from Justice Dontzin, Supreme Court of the State of New York, June 14, 1988, in support of nominee 666
    Letter from Stanley J. Levy, June 27, 1988, in support of nominee 720
    Supplementary statement of Lee S. Kreindler 723
Smith, Hon. Fern M.:
    Letters from:
        California Women Lawyers 615
        Bar Association of San Francisco 616
        American Bar Association 618
    Biography 778
    Questionnaire 779

WEDNESDAY, JULY 27, 1988

STATEMENTS

Fish, Hon. Hamilton, Jr., Representative from New York State 831
D'Amato, Hon. Alfonse 832
Gramm, Hon. Phil 835
Heinz, Hon. John 837

TESTIMONY OF NOMINEES

Hutton, Herbert J., to be U.S. district judge, Eastern District of Pennsylvania. 839
Patterson, Robert P., Jr., to be U.S. district judge, Southern District of New York 844
Rader, Randall R., to be a judge of the U.S. Claims Court 877
Lake, Simeon T., III, to be U.S. district judge, Southern District of Texas 930

WITNESSES

Panel consisting of Patricia Ann Reaux, Louise Black, and Charles Bean, Houston, TX 894
Black, Louise, Houston, TX 896
Bean, Charles, Houston, TX 900
Panel consisting of Howard Hoover, Esq., vice president and general counsel of Browning-Ferris Industries, Houston, TX; Larry Veselka, Esq., Houston, TX; and John Hill, Esq., Houston, TX 906
Veselka, Larry, Esq., Houston, TX 908
Hill, John, Esq., Houston, TX 910

QUESTIONNAIRES AND OTHER SUBMISSIONS

Hill, John: Prepared statement 912
Hutton, Herbert J.:
    Biography 944
    Questionnaire 945
    Letter from the American Bar Association 959
Lake, Simeon T., III: Response to questions 933
Patterson, Robert P., Jr.:
    Response to questions 846
    Biography 960
    Questionnaire 961
    Letter from the American Bar Association 1007
    Letter from the Association of the Bar of the City of New York 1008

Page

Rader, Randall R.:
  Response to questions 881
  Biography 1009
  Questionnaire 1010
Simon, Hon. Paul:
  Prepared statement of Attorney David Jones of Houston, TX 897
  "U.S. Judge Orders No Interference In Land Fill Protest," Houston Chronicle, November 5, 1981 905
  Letter from John P. Craig, Minister, Ralston Memorial Presbyterian Church, July 5, 1988, re landfill 907
  Letters and articles re nominee Simeon T. Lake III 917

ALPHABETICAL LISTING OF NOMINEES FOR FEDERAL APPOINTMENTS

Cambridge, Hon. William G.: to be U.S. district judge, District of Nebraska 421
DuBois, Jan E., to be U.S. district judge, Eastern District of Pennsylvania 619
Erickson, Hon. William H., to be U.S. district judge, District of Colorado 248
Hutton, Herbert J., to be U.S. district judge, Eastern District of Pennsylvania. 944
Lake, Simeon T., III, to be U.S. district judge, Southern District of Texas 355, 930
Levitt, Howard E., to be U.S. district judge, Eastern District of New York 125
Patterson, Robert P., Jr., to be U.S. district judge, Southern District of New York 844
Rader, Randall R., to be a judge of the U.S. Claims Court 1009
Roberto, Robert, Jr., to be U.S. district judge, Eastern District of New York 79
Schell, Hon. Richard A.: to be U.S. district judge, Eastern District of Texas 416
Smith, Hon. Fern M., to be U.S. district judge, Northern District of California. 612
Summit, Stuart A., to be U.S. circuit judge, U.S. Court of Appeals, Second Circuit 5, 716

CONFIRMATION HEARING ON: STUART A. SUMMIT, ROBERT ROBERTO, JR., AND HOWARD E. LEVITT

THURSDAY, APRIL 21, 1988

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The committee met, pursuant to notice, at 2:18 p.m., in room SD-226, Dirksen Senate Office Building, Hon. Patrick J. Leahy (acting chairman) presiding.

Also present: Senator Grassley.

Staff present: Steven J. Metalitz, chief nominations counsel; Andrew Rainer, investigative counsel; Andrew Tartaglino, investigator; Robert Short, minority chief investigator; and Frank Klonoski, minority investigator.

Senator LEAHY. The committee will come to order.

This afternoon, we have three nominees: Stuart Summit, Robert Roberto, and Howard Levitt. This is the 25th hearing in this Congress to consider nominations to the Federal courts, other than the U.S. Supreme Court.

Stuart Summit has been nominated to be a U.S. Circuit Judge for the Second Circuit. The two other nominations for the district court in the Eastern District of New York are Robert Roberto, Jr., and Howard Levitt. Of course, we will first hear from Senators; in this case, Senator D'Amato, if he wishes to introduce nominees to the committee.

There have been extensive questionnaires completed by all three nominees. The public part will be printed in the record of this hearing, along with any other statements of any other Senators unable to be here. The confidential part, of course, will be kept in the committee record.

Senator Thurmond is involved in an important mark-up over in the Armed Services Committee and thus will not be here.

So, Senator D'Amato, I wonder if you would like to come up and introduce all three of these nominees. I know you also have some important meetings you are supposed to be at and I would not want to tie you up, so if you would like to introduce everybody who is here.

STATEMENT OF HON. ALFONSE M. D'AMATO, A U.S. SENATOR FROM THE STATE OF NEW YORK

Senator D'AMATO. Well, Mr. Chairman and Senator Grassley, thank you for your courtesy in affording me the opportunity to be before this distinguished committee and two of my close colleagues.

I am deeply honored to have the opportunity and the privilege to present for the committee's favorable consideration, I hope, the nominee of our President to the second circuit, Stuart A. Summit.

Although I do not know Mr. Summit personally, I know him to have a reputation as being an outstanding attorney. The fact of the matter is, Mr. Chairman, today Stuart Summit serves on the New York State Commission on Judicial Nominations as counsel. That is a part-time endeavor, but it is a prestigious and important one.

He is senior partner in a major law firm in New York. He has served for more than 10 years on the Mayor's Committee of New York City on the Judiciary as the executive secretary. He has served as one of the law secretaries to probably one of New York's greatest Supreme Court judges in our State system, and that is law secretary to Justice Breitel, who is legendary.

So, Mr. Chairman, I am deeply honored to submit Stuart Summit's name as a person steeped in the law and I am certain that as a circuit court judge in the prestigious second circuit, he will continue to distinguish himself as he has to date.

In the case, Mr. Chairman, of the two nominees for the district court in the eastern district, let me say that I know both of these gentlemen, distinguished jurists in their own right at the present time, both of them serving on the New York State Supreme Court.

In the case of Howard Levitt, not only do I know him in terms of his legal expertise—a graduate of Harvard Law School, secretary to Dan Albert, one of the great judges in our State, working on the Senate's Law Committee. In addition, he was counsel to the board of supervisors where I was a supervisor in Hempstead for many years. He was town attorney in the town of Hempstead, chief legal officer of a town of 800,000 people, where I had, again, the privilege of working with Howard Levitt.

He is the kind of individual who is incisive. He is a man of integrity. He is a man that I believe will play an important role in furthering the jurisprudence of the eastern district, which is one that is beleaguered in terms of the caseload.

The eastern district covers all of Nassau, Suffolk, Brooklyn, Staten Island, and as it relates to the incredible load, particularly in the criminal cases, probably is one of the busiest in the country. So he will be taking on a very important task to help that group of gentlemen and jurists who really are doing the people's work.

In the case of Bob Roberto, Mr. Chairman, again, he is a practitioner of the law for more than 30 years, a graduate of Brooklyn Law School, an individual who has served in the past 10 years on both the supreme court and the district court. He has served as counsel to the bar association, the grievance committee, not an easy position; executive assistant district attorney in Nassau County; also as a distinguished jurist.

He served Judge Oppido for a number of years as law secretary; he has been assistant attorney general of the State of New York, a member of the bar for more than 30 years. He has distinguished himself in every manner as it relates to the practice of law. Both gentlemen are fine family men known to the community, men active in civic and religious endeavor.

Mr. Chairman, I recommend all three nominees and it is a great privilege for me to be here, particularly with two gentlemen whom I have known for so many years. I know that there will be thoughtful, probing questions, but let me simply suggest this, Mr. Chairman. As it relates to these gentlemen, I believe that they are men of integrity, men of character, and men of proven capacity.

Senator LEAHY. Thank you very much.

Gentlemen, I would mention that Senator D'Amato has urged that we go forward with these hearings and has been very—well, we have heard from him a great deal here in the committee as he asked to get them moving.

In fact, we set at his request today as a hearing date. It is a day that would not have otherwise been a hearing date, but it was done at the request of Senator D'Amato, in keeping with my practice of trying to make sure that any Senator who specifically asks for a hearing on a specific nominee will have that. To my understanding, that has been done in each instance.

It is just that Senator D'Amato is here more than anybody else, I think, and that is, of course, to his credit.

Let me just ask before Senator D'Amato leaves, Mr. Summit, do you have members of your family here?

Mr. SUMMIT. I have friends here, Mr. Chairman.

Senator LEAHY. Would you like to introduce them so it can be on the record that they are here?

Mr. SUMMIT. Yes, I would, Senator, if I may.

Senator LEAHY. Go ahead, please.

Mr. SUMMIT. All right, fine. I have with me today my good friends, Mary Ann Kramer; Norman Schwartz, who is a tax attorney here in the District of Columbia with the Morgan, Lewis firm. He and I go back to college and law school together, well over 30 years.

My good friend, Robbie Calloway, who is Director of Governmental Affairs for Boys Clubs of America and with whom I have worked closely in the Boys Clubs movement; and Michael Garrett of the New York City office here in the District, who is the son of one of my partners and closest friends.

Senator LEAHY. Well, thank you, and I am delighted that they are here. Again, I want it noted for the record that they are here and they have taken the time to come here with you.

Judge Levitt, do you have members of your family here?

Judge LEVITT. Indeed, Mr. Chairman. I would like to introduce my wife, Davida.

Senator LEAHY. How do you do?

Judge LEVITT. We have been married since September 4th, 1955. I would also like to mention—while they are not here physically, they are here in spirit—my three children. The oldest, my son, Mark, as a matter of fact, was a page in Congress through Representative Wydler back in 1974 and was an intern with Senator Javits.

My next oldest is a lieutenant in the U.S. Navy presently attending the post-graduate school in Monterey for his master's degree in computer management. He had served recently in the Gulf on a destroyer, the *John F. Young,* which back last year fired on one of the Iranian oil rigs, and we are happy to have him back in U.S. territory.

Senator **Leahy**. I am sure.

Judge **Levitt**. And my youngest, my daughter, Wendy, now an intern in the City of London Polytechnic Institute, also could not be here because of the distance.

Senator **Leahy**. I understand.

Judge **Levitt**. They all asked me please to put on the record the fact that they are here with me in spirit.

Senator **Leahy**. Well, thank you, and I am glad you did that. Ms. Levitt, we welcome you here today.

Judge Roberto, it is good to see you again. Do you have members of your family here?

Judge **Roberto**. I do, Senator. I am very pleased to introduce to you again my wife and best friend of 30 years, Norma.

Senator **Leahy**. Ms. Roberto, good to see you.

Judge **Roberto**. My oldest daughter, Barbara Ann, a graduate of Saint John's University Law School, recently admitted to the bar in both New York and New Jersey and practicing law in New York at the present time.

Senator **Leahy**. Barbara Ann would not remember, but I did see her once before, but she was only about 6 years old at the time. She has changed considerably since then.

Judge **Roberto**. Senator, you met the entire family 15 years ago and I was sure that you would remember them.

Senator **Leahy**. I remember, I remember.

Judge **Roberto**. My youngest daughter, Diana, is presently a student at Georgetown Law School, living here in Washington; and my son Christopher, who is a computer engineer on Long Island.

I am very pleased to have the entire family together. It is very seldom that we can get together, but this is a special occasion and they are pleased to be here.

Senator **Leahy**. Well, I am glad to see you all again. Your parents have not aged at all in the last 15 years, but the three of you have changed considerably. You were an attractive trio back then and even more so today.

I did not know before Senator D'Amato left if you wanted to say anything, Senator Grassley.

Senator **Grassley**. No.

Senator **Leahy**. Senator D'Amato, I know you have other hearings that you are supposed to be at and I appreciate your taking all this time in being here.

Senator **D'Amato**. Well, Mr. Chairman, I want to thank you and the committee for your courtesy and the expeditious manner in which you have made it possible for these hearings to be held and your taking of your time, and I thank your staff as well and it is good to be with you.

Senator **Leahy**. Thank you.

If we could start, then, and Judge Levitt and Judge Roberto, if you could step down and we will start with Mr. Summit. If you would raise your right hand, please, do you swear the testimony you shall give in this matter shall be truth, the whole truth and nothing but the truth, so help you God?

Mr. **SUMMIT**. I do.

Senator **LEAHY**. Please be seated.

Did you have any opening statement you wished to make? It is not necessary, but I just did not know whether you did.

TESTIMONY OF STUART A. SUMMIT, NEW YORK, NY, TO BE U.S. CIRCUIT JUDGE FOR THE SECOND CIRCUIT

Mr. **SUMMIT**. Senator, I just want to say I'm honored to be here and I appreciate the committee's courtesy and the courtesy of Mr. Metalitz for arranging it and briefing me on what would take place.

Senator **LEAHY**. I would like to just ask a few questions about the process which saw you nominated to the second circuit. You stated in your questionnaire that, "In mid-June of 1987 I was asked by Deputy Attorney General Arnold Burns whether I would be willing to be considered as a possible candidate for the Court of Appeals for the Second Circuit."

Was this the first time Mr. Burns had discussed such a possibility with you or had he discussed it earlier?

Mr. **SUMMIT**. This was the first time, Senator. I was in Chicago trying a case at the time and we talked initially over the telephone.

Senator **LEAHY**. Now, can you just bring the microphone just a little bit closer to you, just yank it? There you go.

Now, prior to that discussion with Deputy Attorney General Burns, had you had any discussions with anybody else in the Department of Justice about the possibility of a second circuit nomination?

Mr. **SUMMIT**. No, sir, not at all.

Senator **LEAHY**. Or anybody at the White House or anybody within the government?

Mr. **SUMMIT**. No, sir.

Senator **LEAHY**. Now, Mr. Burns, of course, had been your law partner for many years before he joined the Justice Department in late 1985, a matter he also mentioned to me a few weeks ago when he asked if it was possible to have your hearing brought up.

At the time he called you in June 1987, you said you were out in Chicago?

Mr. **SUMMIT**. Yes.

Senator **LEAHY**. He was the Deputy Attorney General; he had authority over the Justice Department's activities in the field of judicial selection, and so in that sense he was talking about that part of his job. In this case, of course, he was directly referring to you.

Do you recall any other occasions on which Mr. Burns spoke to you about matters that were within his responsibilities as a Department of Justice official?

Mr. **SUMMIT**. No, no, not at all.

Senator **LEAHY**. Now, according to the questionnaire, the Justice Department moved right along on your nomination. Let me just see if I have got the sequence right. Looking at it here on the questionnaire, you say that by late June or early July you were told that your nomination had been recommended to the President, and a few days later the President submitted it to the FBI and the American Bar Association.

So if you were first approached around mid-June, that means that the Justice Department clearance process was completed in about 2 to 3 weeks, is that correct?

Mr. SUMMIT. Approximately, yes.

Senator LEAHY. That is unusual to be able to go that quickly. Some nominees take many months. In fact, some the administration has sent up have taken years to move through the process. Yours was completed in 2 to 3 weeks.

Then you went through the FBI and the ABA clearance procedure. Do you know, for example, that it took the FBI only a month to complete its background investigation?

Mr. SUMMIT. I did not know that, Senator.

Senator LEAHY. I am told it did, which is also very swift.

Do you know how this vacancy came about?

Mr. SUMMIT. I was told that it was through the taking of senior status by former Chief Judge Irving Kaufman.

Senator LEAHY. Last September, as I recall—I paid a little bit more attention than normal because my own State is within the second circuit—it was reported that Judge Kaufman had been pretty much resistant to the idea of taking senior status, but he changed his mind when he was offered a Presidential Medal of Freedom if he retired. I will place that article in the record.

[Article follows:]

LEVEL 1 - 4 OF 4 STORIES

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September 19, 1987, Saturday, Final Edition

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HEADLINE: U.S. Judge Retires, Gets Reagan Award;
Meese Denies Trade Was Made With 2nd Circuit's Kaufman

BYLINE: Ruth Marcus, David Hoffman, Washington Post Staff Writers

BODY:

Attorney General Edwin Meese III and several White House officials arranged for federal appeals court Judge Irving R. Kaufman to be awarded the Presidential Medal of Freedom, the nation's highest civilian honor, after Kaufman agreed to retire from active service, according to sources familiar with the episode.

According to one well-informed source, the judge's retirement and the Medal of Freedom were part of an "explicit" trade. Meese denied through a spokesman that any trade was made.

The retirement of Kaufman, a liberal on many issues, makes room for a conservative on the closely divided 2nd U.S. Circuit Court of Appeals in New York. The Reagan administration plans to nominate **Stuart Summit**, a former law partner of Deputy Attorney General Arnold I. Burns, to fill the vacancy, according to knowledgeable sources. Summit would be the Reagan administration's eighth appointee to the 13-member panel, considered one of the most important federal courts.

Kaufman had long sought the Medal of Freedom, according to knowledgeable sources. After The Washington Post made inquiries, the White House announced yesterday that he will receive it next month.

Two senior White House officials opposed awarding Kaufman the medal, but other White House officials joined Meese to persuade President Reagan to give it to him, informed sources said.

Kaufman, who announced in June that he was taking "senior status" on the appeals court, refused comment yesterday.

Kaufman, who as a trial court judge ordered the execution of convicted Soviet spies Julius and Ethel Rosenberg in 1951, is known for his liberal rulings on the First Amendment, civil rights, prisoners' rights, environmental protection

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and other issues.

Yesterday's White House announcement said Kaufman, 77, will be cited for "his exemplary service to our country as a federal judge in New York, his works as chairman of the president's commission on organized crime and his multifaceted effort to promote an understanding of the law and our legal tradition." Former chief justice of the United States Warren E. Burger will receive the medal at the same time, at a ceremony on Wednesday, Oct. 7.

Responding to questions, Justice Department spokesman Terry H. Eastland said yesterday "it is my understanding that there was no quid pro quo" between the medal and Kaufman's decision to retire from active status. "These decisions were independent of one another. They were not related. That's my understanding."

Eastland said, "My understanding is that the president had decided to award this medal to Judge Kaufman while he was a sitting judge and the only reason he didn't give it to him then is that the president was advised not to give it until he was in senior status."

Eastland provided a statement from Meese saying, "At no time did the attorney general's recommendation or the president's decision in that matter have anything to do with whether or when Judge Kaufman took senior status."

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Kaufman declined comment through a law clerk. "It is the policy of the chambers not to comment on press reports," said clerk Tom Dahdouh.

In a May 20 letter, Kaufman informed Reagan of his decision to take senior status effective June 30. Federal judges are appointed for life, and a judge with senior status generally takes on a lighter workload but is still permitted to rule on cases. The decision to take senior status creates a vacancy.

Sources said Kaufman has been seeking the medal since the Carter administration. The Presidential Medal of Freedom is awarded "to persons who have made especially meritorious contributions," according to a White House fact sheet. Reagan has given the medal to 61 people, including orchestra conductor Mstislav Rostropovich, former U.N. ambassador Jeane J. Kirkpatrick, singer Frank Sinatra, and the Rev. Billy Graham.

The Washington Post interviewed several sources with close knowledge of the extensive discussions and negotiations between Kaufman and the administration over his retirement and its timing, and the protracted internal debate over whether he should receive the medal.

According to one source, Meese attended a dinner party at Kaufman's Park Avenue apartment early last spring at which Meese suggested that Kaufman could obtain the medal if he agreed to take senior status. Meese said through his spokesman that he did attend the dinner and that he had discussed the medal at some point, either then or later, with Kaufman. However, Meese The Presidential Medal of Freedom is awarded "to persons who have made especially meritorious contributions."

said it is "absolutely untrue" that he discussed a trade of the medal for Kaufman's retirement, Eastland said.

According to Eastland and others, Meese strongly advocated giving Kaufman the medal. These sources said Kaufman was proposed in the administration for the medal last spring, as he had been in earlier years.

At that point, sources said Meese spoke to Reagan about giving the award to Kaufman, and the president agreed. Subsequently, objections to the award were raised by White House counsel Arthur B. Culvahouse and White House deputy chief of staff Kenneth M. Duberstein.

Duberstein and Culvahouse could not be reached for comment yesterday.

Culvahouse questioned whether the award should be given to a judge in active service, saying that this would be unprecedented, sources said. At some point

in mid-April, Reagan reversed himself because of this objection, the sources said.

Meese then met with the president and chief of staff Howard H. Baker Jr. to argue for the award, sources said. They said Anthony R. Dolan, the president's chief speechwriter, and T. Kenneth Cribb Jr., an assistant to the president and a former top aide to Meese, also argued in favor of giving Kaufman the medal, and the president decided to do so.

Cribb could not be reached for comment yesterday. Dolan said he had been an advocate of giving Kaufman the award for four years. He also said he "agreed completely" with Culvahouse's objection that the award could not be given to a sitting judge.

About May 1, Kaufman informed Meese that he would take senior status in 60 days, at the end of June, one well-informed source said. Kaufman underwent open-heart surgery this spring and his decision to retire was related to his health problems, the sources said.

Meese urged Kaufman to retire sooner because the awards were being announced in mid-June, the source said. Kaufman then wrote to Reagan May 20 sticking with the planned June 30 retirement date.

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Kaufman was not among the recipients when the medals were announced June 23. Among those who were honored were the late Justin W. Dart Sr., an industrialist and longtime Reagan backer; the late actor Danny Kaye, and Anne Armstrong, former ambassador to Britain and cochairman of the Republican National Committee.

Baker called Kaufman to assure him he would receive the award even though he could not be included in the group of winners announced June 23, two sources said. Kaufman asked Baker for a letter from the president informing him officially that he would receive the award, and the letter was sent in early July, the sources said.

GRAPHIC: PHOTO, IRVING R. KAUFMAN. JAMES M. THRESHER

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NAME: EDWIN MEESE III; IRVING R. KAUFMAN; RONALD REAGAN; STUART SUMMIT

Senator Leahy. Do you know anything about that?

Mr. Summit. No, sir, I have no knowledge on that whatsoever. I do——

Senator Leahy. You have seen the reports, though?

Mr. Summit. I heard of them, but I have been told by friends of Judge Kaufman that he vigorously denies that sequence of events and indeed has been in touch with that newspaper specifically to deny it.

Senator Leahy. And we will be asking some other questions of the Justice Department, but basically anything you know about it is the same thing that just anybody else might have read in the paper?

Mr. Summit. That is right. I was not told a thing about the circumstances that led him to take senior status. I do know that he has had some health problems, Mr. Chairman.

Senator Leahy. I see. Now, your questionnaire talks about your career as a lawyer. You have had substantial litigation experience. You have not, however, been a judge in any court, is that correct?

Mr. Summit. That is correct.

Senator Leahy. Have you ever served in a quasi-judicial capacity, hearing officer, arbitrator, something like that?

Mr. Summit. I have been an arbitrator on several occasions and, as Senator D'Amato noted, I was a law clerk for one of New York's great judges, Charles Breitel.

Senator Leahy. What type of arbitration?

Mr. Summit. Well, the largest and longest one I was involved with was a 28-day arbitration—28 hearing days—involving a claim of dozens of millions of dollars among parties, a question of breach of contract, defenses to breach of contract, and evaluation of opportunities that were deprived the claimant by reason of the breach of contract.

Senator Leahy. What was the name of—do you remember the name and date of that arbitration?

Mr. Summit. I don't remember the plaintiff's name. The defendant was the Princess Hotel Chain, their corporate name, which I don't recall, but it was about the Princess Hotel Chain.

Senator Leahy. Do you recall approximately when that was?

Mr. Summit. Oh, it would have been about 10 years ago, Mr. Chairman.

Senator Leahy. Do you remember any of the other attorneys who were involved in that?

Mr. Summit. Yes, yes. The attorney for the respondent, the hotel chain, was the firm of Lord, Day and Lord, represented principally by Jack Castles. The plaintiff was represented by a man named Richard Frank, I believe.

Senator Leahy. Now, when you were involved in the process of selecting New York State and municipal judges, you were executive secretary of the Mayor's Committee on the Judiciary and you were counsel to the State Commission on Judicial Nomination.

Can you just give me an idea of what you do in those capacities?

Mr. Summit. Both roles are really counsel, as well as staff director. The Mayor's Committee on the Judiciary, for which I functioned for about 12 years, nominates to the mayor of the city of

New York for the civil—interim appointments to the civil court, full-term appointments to the criminal and family courts.

The committee is picked one less than half by the mayor of the city of New York, one more than half by the two presiding justices of our State appellate divisions within the city of New York.

I, in turn, was chosen by the committee itself, not by the mayor. I served under three mayors, three separate mayors, two terms of Mayor Lindsay—I'm sorry, three mayoral terms, two terms of Mayor Lindsay and one term of Mayor Beame.

My function was to solicit candidates for those courts, to conduct an investigation of their qualifications for those courts, and to inform the committee members of everything I was able to learn about the candidates so that they could be interviewed and passed on by that committee.

Similarly, after I had stopped doing that work for the city, New York State passed a constitutional amendment by which its highest court, which we call the New York Court of Appeals, became an appointive court and a selection system was set up by which this commission with which I serve nominates to the Governor of the State of New York people from whom he must chose.

My job is essentially the same job, but on the very different level of the highest court. My job remains to this day to help the commission identify persons who might be proper candidates for the court of appeals, to conduct the investigation of their qualifications, and to fully inform the commission members of what I found out.

I read opinions. I do all the things, I imagine, that your own staff perhaps does, and then do the actual legal work for the commission as well.

Senator LEAHY. Thank you. You know, one of the reasons I asked whether you had acted as a judge in any forum is that every nominee has a difficult transition to face, a transition from the role of advocate to the role of impartial decisionmaker.

We ask every judicial nominee about this transition, and I know Senator Thurmond has gone into this in great detail with just about everybody, speaking about judicial temperament and how they must react and behave, and so on.

A lot of lawyers we have talked to described you as an extremely forceful, very aggressive advocate for your clients, and some have said this with a sense of awe, some complimentary. Others have viewed it as a criticism in the sense that your aggressiveness sometimes makes the resolution of a dispute unnecessarily difficult.

But, you know, this is going across the spectrum. I am more interested to hear from you. How do you go from being an aggressive, forceful advocate to being the person who can sit there and be totally impartial and weigh both sides and make sure that both sides are heard fairly?

Mr. SUMMIT. Well, sir, if I may first say I would be surprised if there were very many adversaries who felt that my manner interfered with the resolution of a case. I work very hard to maintain good and cordial relations with adversaries whenever they will permit me to do so. There are some adversaries with whom that is very difficult, but I truly try.

I have been an advocate and writer on the subject of alternate dispute resolution and mediation. I'm a great believer that cases should be resolved, and it requires good, professional lawyers who get along to resolve cases, and I feel badly if anyone has said to the contrary in my own case.

I personally feel that it will not be as difficult a transition for me as it might be for many. I am a very calm person. I think I sometimes annoy my partners because when things are tense and they expect me to be as tense as the situation, I fight that tendency.

I am essentially someone who tries to look at every situation as objectively and neutrally as possible. I believe that that perhaps is one reason I have been an effective trial lawyer and have done well overall for my clients because it really doesn't help the resolution of a matter to only see what your client would like seen.

It really does help even the resolution of a matter as an advocate to maintain objectivity and see a case as a neutral would.

I am a student of courts. I have been in the business, if you will, of assisting people to identify what will be a good judge for almost 20 years. I think I probably have given more thought to the question that you have asked and whether or not those qualities could be found in me than most people have, sir. I believe I can make that transition very successfully.

Senator **Leahy**. In recent days, and you have probably seen them, there have been some press reports concerning the activities of your firm and of its former partner, the outgoing Deputy Attorney General, with respect to some tax shelters.

So I would like to ask you some questions about that. I will do my best to avoid any questions that may get into matters covered by the attorney-client privilege, and if you think that any of these questions do get into privileged material, of course, say so.

The original stories focus on a corporation based in the Bahamas called Hecogenin—is that right—Hecogenin Synthesis, Inc.?

Mr. **Summit**. It sounds right, sir, but I'm not——

Senator **Leahy**. Supposedly, this corporation was conducting research to increase juice extraction from the sisal plant, not a major crop in Vermont. [Laughter.]

The IRS, according to these news accounts, was charging that this was a phony business and it was simply a scheme for investors to claim paper losses for tax purposes.

According to the news stories, the principal promoters of this scheme, Edward Levine and Stephen Goldman, came to your firm in 1978 for legal help in setting up the corporation.

Your firm, then known as Burns, Jackson, Miller, Summit and Jacoby, drafted a private stock offering for Hecogenin, prepared an investment advisory paper on the scheme's Federal tax advantages, prepared other legal documents, and served as the corporation's counsel, according to a story in the April 8 Washington Times.

Is this account of the work your firm did for them in the late 1970s accurate, to your knowledge?

Mr. **Summit**. I don't have direct knowledge. That work was done by corporate and tax partners of mine and at the time I was unaware of the work at all. I did not learn of it until at least 6 or 7 years later when the IRS raised a question about it.

It sounds more or less to be my understanding of it. I really don't know the details.

Senator Leahy. I understand. I am just trying to get the general understanding and, naturally, after this we will have a copy of the transcript. I realize you went through a whole lot of things. You will have plenty of time to take a look at that and if something jumps out at you that you want to add to or subtract from your answer, of course, naturally, feel free.

The newspaper reports indicate that Levine and Goldman came to your firm for legal assistance through Mr. Burns. Is that your recollection?

Mr. Summit. I think so.

Senator Leahy. Did you have anything to do with Messrs. Levine and Goldman retaining your firm to provide these legal services?

Mr. Summit. No.

Senator Leahy. Did you perform any of the work I have described that was done by your firm for Hecogenin around 1978?

Mr. Summit. No.

Senator Leahy. Or did you have lawyers under your direct supervision doing that kind of work?

Mr. Summit. No, sir.

Senator Leahy. That was a different department?

Mr. Summit. Yes.

Senator Leahy. Who, to your knowledge, were the lawyers in your firm besides Mr. Burns who were principally involved in performing the legal work for Hecogenin?

Mr. Summit. Well, as I say, much later when the matter came to my attention, I learned that the work was done by a corporate partner named Erwin Cherovsky, a highly experienced securities lawyer, and a tax partner named Stephen Field, again, a very senior and highly experienced tax partner. There were others who were involved, but they were under their supervision.

Senator Leahy. It has been reported that at least one of your partners, in this case Mr. Burns, invested in this company. Did you invest in it or have any investment in that firm?

Mr. Summit. No.

Senator Leahy. You say that with such a smile.

In subsequent years, did your firm perform any legal work for Hecogenin Synthesis, Inc.?

Mr. Summit. We did, I came to learn. We had done very routine work for them and then when the IRS started to conduct an investigation of the entity and contested the tax treatment that a couple of the investors had taken, the matter was then brought to my attention.

I was and am head of our litigation group and I end up with problems of miscellaneous kinds and the question was brought to my attention as to whether we should continue to represent Hecogenin, and I believe it was in 1985, but it might have been early 1986 that I, with other partners, made the decision to resign from the representation of that firm.

Senator Leahy. And does your firm still represent the company at all?

Mr. Summit. No, no.

Senator Leahy. And when was it you said your firm stopped representing them?

Mr. **Summit**. I'm not sure of the date, Mr. Chairman. There was a trial scheduled in the tax court in Los Angeles of the two taxpayers' treatment, and in the course of our preparing to help the lawyers for the taxpayers prepare for that trial we learned of things that led us to resign.

And I can't place any date, except that it would have been a month or so prior to that trial in the Los Angeles tax court.

Senator **Leahy**. Do you recall why it was you broke off the relationship with them?

Mr. **Summit**. I do, Senator, very clearly remember why, but I think to say why might be unfair to our former client and perhaps a breach of the privilege. But we reached the conclusion that they should have other counsel. They retained other counsel, a lawyer in the District of Columbia named Stephen Nauheim, I believe.

I don't remember his firm name, but I remember him because we had dealings on turning papers over and the like, and we were done with the matter, other than my going to Los Angeles with a couple of my partners for——

Senator **Leahy**. The matter in Los Angeles, that is when the IRS sued some of the investors?

Mr. **Summit**. That is right, that is right, and the IRS requested, I believe, two of my partners to testify, and I went. They were a tax and a corporate lawyer, so they asked me to go with them to help them get ready for testimony.

Senator **Leahy**. So you were there just to—well, you were there as somebody with litigation experience and to offer advice, and so forth?

Mr. **Summit**. That is right, to work with them to get ready to testify, and also to make certain that the judge of the tax court ruled on any privilege issues that might come up, so that we would honor the Code of Professional Responsibility and not testify about things we weren't permitted to testify about.

Senator **Leahy**. And Mr. Burns testified as a government witness at that trial. Was it part of your role to advise him on behalf of your firm?

Mr. **Summit**. No. As a matter of fact, the government didn't tell me that he was coming and I left Los Angeles a few hours before he arrived and I never even had the opportunity to have dinner with him.

Senator **Leahy**. So you never discussed the Hecogenin situation with him?

Mr. **Summit**. No, no.

Senator **Leahy**. Have you ever discussed it with him since he left your firm and entered the Justice Department?

Mr. **Summit**. Well, when the Washington Times ran the first of the stories about him and this matter, sure, I did call him and express my distaste, and then when they——

Senator **Leahy**. That was just recently?

Mr. **Summit**. It was just a few days ago, yes, but that would have been the first time I discussed this matter with him, to my knowledge, ever.

Senator **Leahy**. Are you familiar with Sulfonic Intermediates, Inc.?

Mr. **Summit**. No, sir.

Senator LEAHY. So you do not know whether your firm performed legal work for Sulfonic—let me spell that, S-u-l-f-o-n-i-c—Intermediates?

Mr. SUMMIT. I don't know, sir. I mean, I should say that at the time that we did the work for Hecogenin that we were probably about 80 to 85 lawyers, so that while I do try to keep track of a lot of things in the office, it is impossible to keep track of everything.

Senator LEAHY. So you do not know whether your firm represents Sulfonic or ever has?

Mr. SUMMIT. I do not know. The name rings no bell to me.

Senator LEAHY. Now, there have been other tax shelters, as I understand it, promoted by Levine and/or Goldman in which your firm has been involved in providing legal counsel, is that correct?

Mr. SUMMIT. I believe so, yes. I won't know any names, probably. The only reason I remember Hecogenin is because it was involved in that trial in Los Angeles.

Senator LEAHY. But have you ever invested in these corporations or partnerships?

Mr. SUMMIT. No.

Senator LEAHY. And you have not been directly involved with the legal work with them other than as you have described?

Mr. SUMMIT. No, I have not.

Senator LEAHY. As you can imagine, we just recently had this material brought forward and that is why the questions have been somewhat general and, at the same time, far-reaching because we really do need your information on it. The information we have is for the most part basically what we have read in the paper. I will put the most recent article into the record at this point.

Mr. SUMMIT. Yes.

Senator LEAHY. I thought before this matter came out and before somebody else raised it, you would probably prefer that we ask you the questions directly than to have us asking each other these questions.

Mr. SUMMIT. Oh, no question, Senator. In fact, Mr. Chairman, I would like to say, if I may, because the article said something to the contrary, I have no information about any claims that have ever been made about my firm's role in those matters at all.

We have not been given notice of any claim. To my knowledge, and I had direct dealings with the IRS counsel when I was in Los Angeles, they have never suggested—that is, the Internal Revenue Service lawyers have never suggested that my firm acted inappropriately as lawyers.

And I just have no information that supports the suggestion in that article that there were claims against us or that our conduct was even in question.

[The article follows:]

[From the Washington Times, Apr. 20, 1988]

FEDERAL BENCH NOMINEE TO BE QUIZZED ON LAW FIRM

(By George Archibald)

Members of the Senate Judiciary Committee will grill federal bench nominee Stuart A. Summit tomorrow on his New York law firm's role in setting up Bahamian tax shelters ruled abusive by the Internal Revenue Service.

Mr. Summit, a White House nominee to the 2nd U.S. Circuit Court of Appeals in New York, represented several of his law partners in a recent federal tax case involving investors in an illegal shelter set up by his firm, according to tax court records.

"We are concerned when a nominee and his law partners are involved in some sort of questionable activity," said Steve Metalitz, special counsel to the Senate Judiciary Committee.

Democratic senators on the committee will ask: "What did the nominee know? What was his involvement?" Mr. Metalitz said.

"Do he or any of his partners have any legal liability [to investors who lost millions of dollars in the illicit schemes]?" he said.

More than 100 investors lost an estimated $40 million in more than a dozen abusive tax shelters targeted by the IRS since 1985, according to government and private lawyers.

The shelters, for which Mr. Summit's law firm prepared stock offerings and legal documents for Bahamian bank financing, turned out to be nonexistent drug research operations in the Bahamas, tax court records show.

One of Mr. Summit's former partners in the firm, Deputy Attorney General Arnold I. Burns, was compelled to be a government witness in a federal tax case against one of the shelters, Hecogenin Synthesis, Inc., the records show.

The case involved two investors who were compelled to pay $121,116 in additional taxes from illegal "business losses" claimed in the phony steroid drug research scheme.

Mr. Burns also was compelled to pay more than $100,000 in additional taxes as an investor in Hecogenin and another phony shelter, Sulfonic Intermediaries, Inc., promoted by his friend and client Edward C. Levine, according to court records and government officials.

Mr. Burns testified that he brought Mr. Levine's business to his law firm in 1978. At the time, he was managing partner of the firm called Burns Jackson Miller Summit & Jacoby.

Mr. Summit took over the firm when Mr. Burns joined the administration in December 1985. Mr. Burns announced his resignation from the Justice Department March 29, reportedly after failing to persuade the White House to oust Attorney General Edwin Meese III because of his prolonged ethics-related legal problems.

Many investors in the phony tax schemes—some who have already paid tax judgments and others still facing tax action by the IRS—are joining forces to defend themselves and to attempt to regain some of their losses, lawyers said.

"The investors might bring some kind of [malpractice] action against the [Summit] firm," said B.J. Adelson, a Los Angeles lawyer who two clients lost about $250,000 in the illicit Hecogenin shelter. "But I just can't comment because that is conceivable," Mr. Adelson said.

In an interview, Mr. Summit said he would not give the names or specify the exact number of shelters his firm set up. It was "a handful," he said.

"I see no reason to comment on what is apparently going to be a lawsuit against us before it is commenced," he said. "No one has been in touch with us to make a demand. No one has been in touch with us to make a claim. We know nothing of it."

Mr. Levine and another promoter of the schemes are under federal investigation, said government officials. The two promoters invoked the Fifth Amendment privilege against self-incrimination when subpoenaed to testify at the Hecogenin tax trial in California.

One Los Altos, Calif., scientist testified at the trial that the Burns-Summit law firm included his name in the stock prospectus without his knowledge. The scientist said he was never involved in the Bahamian operation and that statements in the prospectus about his professional background were inaccurate.

Erwin Cherovsky, a law partner of Mr. Summit, testified that the firm did not verify claims by Mr. Levine about the Bahamian operation that were eventually included in the formal stock offering sent to potential investors over the law firm's name.

Said Mr. Summit: "The hardest thing for accountants and lawyers to deal with is an outright fraud. If they're sloppy, you can catch them. But when someone sets out to defraud someone, they do it in a convincing manner. * * * I have never heard of any suggestion that this firm's work was even a little bit delinquent."

"When they themselves [Mr. Burns and another partner who invested in the schemes] were losing money, it's hard to say they were corrupt, but it's easier to say they weren't very smart," said John F. Banzhaf III, a George Washington law school professor and specialist on legal ethics issues.

"A lawyer must use due care in carrying out his legal duties and in ascertaining and checking at least the important facts," Mr. Banzhaf said. "He must do more than rely upon his client's word."

An offshore research scheme using foreign banks and non-recourse loans to investors with no personal liability to the borrower "is often a red flag in terms of tax fraud," Mr. Banzhaf said.

Because of recent federal court rule changes requiring lawyers to conduct more diligent investigations to verify facts, "the irony is that the [Summit] law firm might be held liable in a malpractice action brought on behalf of some of the people who were ripped off," Mr. Banzhaf said.

Mr. Levine, reached at his home in New Rochelle, N.Y., said he could not comment "because it is inconvenient at this time."

Mr. Burns "would have no comment," said his chief aide Randy L. Levine, another former member of the Burns-Summit law firm. "He [Mr. Burns] severed all relations with the firm. * * * If it [a lawsuit] happens, it will be handled by the law firm in due course."

Senator LEAHY. Thank you.

Now, in your responses to our questionnaire you said, and I quote, "I have not specialized in any specific area of litigation. I have counseled and litigated regarding law firm breakups, and this could be called a specialty."

How many cases have you handled which involved the breakup of a law firm?

Mr. SUMMIT. Well, I think the only one that was litigated, or at least notably litigated that I remember is the breakup of the firm known as Kreindler and Kreindler. I have been counsel for lawyers in a number of other situations as well, but fortunately we were able to avoid litigation.

Senator LEAHY. The Kreindler one, though, went into litigation?

Mr. SUMMIT. It did, yes.

Senator LEAHY. In fact, you said in your questionnaire that an actual case—and tell me if I have got this correct—is it *Levy, Phillips, et al* v. *Kreindler and Kreindler*?

Mr. SUMMIT. That is correct.

Senator LEAHY. And that took up a great deal of your time in 1986?

Mr. SUMMIT. It did.

Senator LEAHY. As I understand it, in that case you were representing a group of partners who left a well-known firm that specializes in representing plaintiffs in personal injury cases.

After these partners had retained you but before any litigation had been filed, they contacted many firms, such as insurance companies and law firms that owed money to Kreindler and Kreindler. For the most part, I guess, these debts were legal fees that had been earned prior to the time your clients left the Kreindler firm.

As I understand it, your clients asked these firms not to pay the money they owed to Kreindler and Kreindler unless the checks were also made payable to your clients. As a result, they held up payments to the Kreindler firm.

The Kreindler firm then sued your clients and asked the New York State trial court for an injunction. That injunction was granted and then, as I understand it, an arrangement was worked out for an interim division of the fees.

A companion case in which your clients were seeking to overturn the Kreindler and Kreindler partnership agreement then proceeded. That ultimately was tried. Is that description of the early stages of the case essentially correct?

Mr. **Summit**. That is very accurate.

Senator **Leahy**. That is a compliment to Mr. Metalitz.

The opinion by Justice Meyers in the injunction proceeding has some rather harsh things to say about the tactic your clients adopted at this stage of the proceeding. Now, let me read you a passage, and in this case the judge refers to your clients as the Levy partners and to the Kreindler firm as K and K.

This is what the judge says: "The issue before me is a narrow one; whether the Levy partners are entitled to the partnership accounts receivable and to interfere with or prevent their collection by the partnership. The answer is clear and unequivocal. They are not and cannot.

"Under any circumstances, the accounts receivable belong to the K and K partnership. The individual partners do not even have a colorable claim to the K and K accounts receivable. Without the unfettered flow from the accounts receivable, K and K would be unable to meet its liabilities to creditors, including clients who have prior claims to partnership assets than do the partners. Cash flow is the lifeblood of K and K's business. A stoppage may cause its demise. It would be irreparably injured."

Now, that is a pretty clear-cut and fairly sharp opinion. Some could read it to suggest that your clients were trying to starve the Kreindler firm into submission. It points out that not just lawyers, but clients—and more importantly, clients, you might say—were threatened by the tactic.

I understand your clients have voluntarily agreed to waive the attorney-client privilege so you can answer this question, so the question is, of course, was the tactic your idea?

Mr. **Summit**. It was not, and indeed I advised against it. Having said that, in fairness to the client, judges sometimes—I hope, should the Senate confirm me, I'll remember this—tend to, once they make their mind up, treat the other side as if it had no argument at all.

I thought that decision was perhaps a little sharply worded under all of the circumstances. But be that as it may, I advised our clients not to write those letters. I told them that I thought it very likely that if they did write those letters they would be the subject of an injunction, and unfortunately my prediction was correct.

Senator **Leahy**. How do you think about that? They have taken a position that you have advised against. Did it reach a level where you felt that there was an ethical requirement not to go forward with their representation, or did you mark it down more as just a strong disagreement of litigants and their counsel—in this case, the litigants being lawyers?

Mr. **Summit**. Well, Mr. Chairman, there certainly could be, in my career have been times when I concluded that a client was proposing to act or had acted so badly and with so little justification that I did not care to be associated with them. This was certainly not that kind of situation at all.

Again, in fairness to them, while I advised against it, what was going on was the reverse. The Kreindler and Kreindler firm was, in their judgment, starving them out by declining to make any distributions to them of monies as they came in.

So these folks who had left the Kreindler and Kreindler firm to start a new firm in a kind of practice where cash flow is a long time in coming were cut off from their source of livelihood as fees were coming into the Kreindler and Kreindler firm.

We are talking about almost half of the equity interest in that firm, so that their former partners were keeping all of the cash flow from the matters upon which both they and their former partners had worked.

So while I felt that as a legal matter, unfortunately, they were not able to do what they did and advised against it, the situation was not such an unmixed one where I would have concluded that my clients were simply bad people whom I should no longer assist.

Senator **Leahy**. You also did send letters on their behalf?

Mr. **Summit**. I'm sorry?

Senator **Leahy**. You also did send letters on their behalf?

Mr. **Summit**. No, I did not, Senator. They sent those letters themselves. We would not have sent those letters and we did not.

Senator **Leahy**. There is one. Maybe I am mixing one with another. Why do you not just take a look at it?

Mr. **Summit**. I'm sorry; I'm corrected, Senator. I have not seen this letter since this date. This was to another firm and it does conclude by asking that they issue checks jointly. You are correct.

Senator **Leahy**. I will note just for the record I am referring to the letter of April 26, 1985, to Carl Tuerk, Cooper, Beckman and Tuerk, in Baltimore regarding *Stanley Levy, et al* v. *Lee S. Kreindler, et al.*

You felt that the position you were putting your name to, while it was not what you would recommend, it was not an improper position to take?

Mr. **Summit**. No, I did not feel so, and this letter is not a simple demand letter. This is—I am writing to a well-known lawyer in Baltimore, Maryland, and explaining—not just making the request that they issue the checks jointly, but explaining the entire argument as to why that was a fair request, so that this kind of letter, it seemed to me, was a letter I could sign because I was writing to a knowledgeable person and explaining why I was writing and what the basis for the request was.

But I do apologize, Senator. I had forgotten that letter completely.

Senator **Leahy**. Oh, no, no. That is why I wanted to show it to you. There is no way one remembers every single letter—certainly, I would not—from 3 years before. We will just note the letter and put it in the record at this point.

[The letter follows:]

BURNS SUMMIT ROVINS & FELDESMAN
445 PARK AVENUE NEW YORK 10022
212-702-2200

WILLIAM A. ALPER
JOSEPH D. ALPERIN
JOHN L. AMABILE
HOWARD BRODLEGLASS
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JOSEPH L. CANNELLA
ERWIN CHEROVSKY
JUSTIN W. D'ATRI
ROGER DURROFF
RALPH M. ENGEL
GUY H. FAIRSTEIN
WALTER FELDESMAN
MORTIMER N. FELSINGER
STEPHEN R. FIELD
STANLEY GARRETT
IRA G. GREENBERG
ALAN B. HYMAN
HERBERT P. JACOBY
HAROLD I. KAHEN
ARTHUR L. KIMMELFIELD

HOWARD L. KLEIN
ASHER B. LANS
SELIG J. LEVITAN
JACK LEVY
MICHAEL S. LICHTENTHAL
JOSEPH E. LOW
GARY L. MADDOCK
RUBIN H. MARCUS
HERBERT L. ORTNER
SAMUEL F. OTTENSOSER
ALLAN A. PINES
DAVID ROSENBERG
LEONARD ROVINS
STUART G. SCHWARTZ
MICHAEL G. SHANNON
PATRICIA COSTELLO SLOVAK
EVAN J. SPELFOGEL
WYNNE R. STERN JR
STUART A. SUMMIT
RICHARD A. WILSHER

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Federal Express

April 26, 1985

Carl E. Tuerk, Jr., Esq.
Cooper, Beckman & Tuerk
Suite 404 Blaustein Building
One NOrth Charles Street
Baltimore, Maryland 21201

Re: Stanley J. Levy, et al. vs.
Lee S. Kreindler, et al.

Dear Mr. Tuerk:

Our clients, Stanley J. Levy, Steven J. Phillips, Alan J. Konigsberg, Ivan B. Rubin and Donald I. Marlin, have requested that I write to you to explain the nature of their dispute with their former partners at Kreindler & Kriendler.

Enclosed is a copy of the complaint in the action between our clients and their former partners, which is pending in the Supreme Court of the State of New York, County of New York. I trust you will find the complaint self-explanatory but I would note that, essentially, it is our clients' position that a written partnership agreement upon which the defendants rely is not effective to govern their relationships for a variety of reasons, including certain ethical rules, the obviously illusory nature of certain critical provisions and because the agreement was not signed by all of the partners during relevant periods.

The net effect of the pending action would be that the relationship among the partners of Kriendler & Kriendler would be governed by New York State law rather than the agreement. And one effect of that would be that each of the partners would have a specific interest in all of the partnership assets in no way limited by provisions of the written partnership agreement. Thus, our clients would each have a percentage interest in all of the firm's receivables. If the position we have taken prevails, the pre-existing Kriendler & Kriendler firm would be a partnership that had been terminated and would have to be liquidated. Were money to be received by the new Kriendler & Kriendler firm that was attributable to the pre-existing firm and not divided among the pre-existing partners, but used in the on-going business of the new Kriendler & Kriendler firm, our clients would be deprived of their appropriate shares of those monies.

Thus, our client's have requested, and this will confirm that request, that their interests be protected with respect to any amounts due by reason of their or Kreindler & Kreindler's participation in the Baltimore asbestos actions. Specifically, we request on their behalf that any check to be issued be made payable to both Kreindler & Kreindler and Levy Phillips & Konigsberg jointly.

Very truly yours,

Stuart A. Summit

SAS:rl
Enclosure

cc: Stanley J. Levy, et al.

Senator LEAHY. Now, around this same time, your partner, David Rosenberg, was representing a lawyer named Arenstein in the breakup of his law partnership with a lawyer named Huston. Were you involved in that case?

Mr. SUMMIT. No.

Senator LEAHY. Now, you were head of your firm's litigation department. Was Mr. Rosenberg part of that department?

Mr. SUMMIT. Yes.

Senator LEAHY. Do you remember how many lawyers there were?

Mr. SUMMIT. Oh, at that time I'm going to guess about 20 to 25 lawyers in the department.

Senator LEAHY. On this *Kreindler* case, that did go to trial and that lasted, what, about 6, 7 weeks?

Mr. SUMMIT. Yes.

Senator LEAHY. And then was settled just before the jury was charged?

Mr. SUMMIT. That is correct.

Senator LEAHY. How do you feel about that? What did you learn in there about settling disputes? I mean, is this an experience that you would happily go through again tomorrow?

Mr. SUMMIT. Oh, good Lord, no, Mr. Chairman. I viewed that as a terrible example of what lawyers can do to each other and I felt badly about it throughout. From the beginning of our having been retained on the matter, I almost begged our adversaries to agree on a mediator or an arbitrator.

I got neutrals to suggest people who would be go-betweens to try to resolve it because it seemed to me inevitable that the feelings running so high, the amounts involved being so large, that there was going to be a terrible war between them.

As a result of that experience and other experiences that I've had in law firm breakups and similar disputes among lawyers, I was one of the authors of a report to the City Bar, the Association of the Bar of the City of New York, proposing a mediation and arbitration system for members of the bar in their disputes, which the City Bar has adopted, and many notable lawyers have agreed to serve as mediators and arbitrators and we have high hopes that at least some cases of this nature will be avoided for the future.

Senator LEAHY. Thank you very much.

Senator Grassley has been very, very patient and I want to yield to him. I have no further questions of Mr. Summit.

Mr. SUMMIT. Thank you, Senator.

Senator GRASSLEY. I came here to listen because I know that this had gotten some publicity and I did want to listen in, but I did not come with the idea that I would have any questions unless they came up at the hearing, and none came up.

But, Mr. Chairman, if I could, before you get to the next witness—and what reminded me to ask this was you said Senator D'Amato had asked for this hearing. I visited with you last week about David Treen. Was there any further thought that we would be able to schedule a hearing on that?

Senator LEAHY. I was supposed to sit down and pull that file out yesterday and the FIFRA mark-up went several hours longer than

I thought and I never got to it. So bear with me another day and let me pull the thing out and we will do it.

Senator **GRASSLEY**. Okay.

Senator **LEAHY**. That was purely my schedule, not getting the darned file out yesterday.

Senator **GRASSLEY**. Yes, and then maybe you and I could visit about it?

Senator **LEAHY**. Sure.

Senator **GRASSLEY**. I do have a request for an Iowan. I do not know whether you are going to have a hearing because we do not usually have hearings on U.S. attorneys, but the U.S. attorney for D.C. is an Iowan—or he is not an Iowan today, but his family and his background is all northwest Iowa, Jay Stephens, and I just wondered if we were going to be able to move that along.

Senator **LEAHY**. The nomination came up just yesterday. Let me try to expedite it. I guess we just got it this week, the actual nomination.

Senator **GRASSLEY**. Okay, thank you.

Senator **LEAHY**. We will stamp Iowa on the outside of it in bright blue letters so nobody will overlook that one.

Senator **GRASSLEY**. Okay, thank you very much.

Senator **LEAHY**. Thank you very much, Mr. Summit. I appreciate you being here.

Mr. **SUMMIT**. Thank you, Mr. Chairman.

Senator **LEAHY**. Judge Roberto, would you step forward?

Incidentally, I was going to say to you and your friends, please do not feel you have to stay longer; it is too nice a day.

Also, I should note for the record that we will have some written questions for Mr. Summit.

[Response to questions follow:]

April 22, 1988

Honorable Patrick J. Leahy
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Senator Leahy:

Enclosed please find the responses to the questions from Senator Strom Thurmond that were given to me after yesterday's hearing.

I very much appreciate the courtesy extended to me by you, and by Mr. Metalitz. You both made a naturally tense occasion as comfortable for me as possible.

Respectfully,

Stuart A. Summit

RESPONSES TO QUESTIONS FROM SENATOR STROM THURMOND FOR STUART A. SUMMIT, OF NEW YORK, TO BE UNITED STATES CIRCUIT JUDGE FOR THE SECOND CIRCUIT

1. MR. SUMMIT, ARE THERE EVER ANY CIRCUMSTANCES UNDER WHICH A JUDGE SHOULD ATTEMPT TO ESTABLISH NEW JUDICIAL PRECEDENT, AND IF SO, WHAT CRITERIA WOULD YOU CONSIDER IN ORDER TO DETERMINE THE PROPRIETY OF REVERSING EXISTING PRECEDENT?

ANSWER: WHILE IT IS CONCEIVABLE THAT NEW PRECEDENT MAY BE MANDATED, IT SHOULD REQUIRE EXTREME CIRCUMSTANCES, PARTICULARLY FOR AN INTERMEDIATE APPELLATE COURT, TO OVERTURN ESTABLISHED RULES OF LAW. OUR SYSTEM DEPENDS ON STABILITY AND PREDICTABILITY, SO THAT COURTS SHOULD STRIVE TO AVOID UNUSUAL DECISIONS. LITIGANTS, THE OTHER BRANCHES OF GOVERNMENT AND THE PUBLIC ARE ENTITLED TO PLAN THEIR CONDUCT BASED ON THE LAW AS IT HAS BEEN. THERE ARE, CONCEIVABLY, SOME INSTANCES WHERE THE UNDERPINNINGS OF A PRIOR RULE HAVE GRADUALLY ERODED OVER THE YEARS, SO THAT THE RULE CAN NO LONGER BE JUSTIFIED. IN SUCH A CASE, THERE MAY NO LONGER BE GENERAL RELIANCE ON THE PRIOR RULE. BUT, I STRESS, THAT DECISION CANNOT BE MADE LIGHTLY, AND PROBABLY SHOULD BE THE RESULT OF A CONSULTIVE PROCESS AMONG MANY JUDGES, AS IN AN EN BANC DECISION.

2. MR. SUMMIT, WE FREQUENTLY HEAR THE ARGUMENT THAT COURTS ACT IN RESPONSE TO VARIOUS SOCIAL PROBLEMS BECAUSE THE LEGISLATURE HAS FAILED TO ACT ON ITS OWN. HOW WOULD YOU RESPOND TO THIS DEFENSE OF AN ACTIVIST JUDICIARY?

ANSWER: NEGATIVELY. THAT CONGRESS DOES NOT ENACT LEGISLATION ON ANY SUBJECT DOES NOT ALTER THE COURTS' PROPER ROLE. IT WOULD BE PRESUMPTUOUS FOR A JUDGE TO ACT AS HE OR SHE THINKS CONGRESS (OR A STATE LEGISLATURE) SHOULD HAVE.

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STUART A. SUMMIT
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PROFESSIONAL CORPORATIONS
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—
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TELEX 14-8376

May 17, 1988

,/J RECEIVED MAY 1 8 1988

FEDERAL EXPRESS

United States Senate
Committee on the Judiciary
Dirksen Senate Office Building
Room SD-224
Washington, DC 20510

Attn: Hon. Steven J. Metalitz
Chief Nominations Counsel
to the Committee

Dear Sirs:

Enclosed are my responses to the questions delivered to me with Senator Leahy's letter of May 10, 1988.

Pursuant to the request in Senator Leahy's letter, I hereby attest that the statements made in the enclosed responses are accurate to the best of my knowledge and belief.

Respectfully,

Stuart A. Summit

SAS:dlj

Enclosure

QUESTIONS ON TAX SHELTERS

Prior to the April 21 hearing, it appears that you had not had an opportunity to review your law firm records with respect to your firm's representation of certain tax shelter entities. Now that you have had a chance to do so, please respond to the following questions. Please omit any information subject to an attorney-client privilege, unless such privilege has been waived.

1. It has been reported that one of the tax shelter corporations which your firm represented was named Sulfonic Intermediates, Inc. Did your firm perform legal work for Sulfonic Intermediates? If so, please describe generally the nature of the work performed. Were you personally involved in performing this work, or did you supervise other attorneys who performed the work?

RESPONSE:

I have been advised by my partner, Joseph L. Cannella, that he is familiar with the records of this firm, and that the firm did represent Sulfonic Intermediates, Inc. The general nature of the legal work performed is described in the response to Question 3. I was not personally involved in performing this work. I did not supervise other attorneys who performed the work.

Does your firm now represent Sulfonic Intermediates? If not, when and under what circumstances did the representation terminate?

RESPONSE:

2. This firm does not now represent Sulfonic Intermediates, Inc. The date on which we formally ceased representation of that entity in any respect was July 15, 1986. We ceased to represent a number of entities connected with Edward Levine at the same time, for the same reasons. The attorney-client privilege would appear to prevent our describing the circumstances under which the representation was terminated. I was personally involved, with others, in the decision to terminate the representation.

3. If after reviewing your records you can properly provide the Committee with any other information concerning your contact with Hecogenin Synthesis, Sulfonic Intermediates, or any other tax shelter entity promoted by Messrs. Edward Levine and/or Stephen Goldman, including a list of the corporate or partnership names of such entities, please do so.

RESPONSE:

The firm's records, as communicated to me by Mr. Cannella, reflect that the same general services were provided by the firm to the entities listed below. I am advised that the work performed consisted of organization of the entity, assistance in the preparation of the private placement memorandum, including the appropriate related work necessary thereto, and rendering a legal opinion describing potential tax consequences of the investment. In addition, the firm was representing each of the below listed entities, and two others (Dexa Corporation and Methasone Partners) with respect to Internal Revenue Service audits at the time we ceased work. I am also advised, based on Mr. Cannella's knowledge of the records, that in 1983 we were requested to prepare a tender offer document and render tax advice in connection with a proposed tender offer by an entity known as Nita Chemical Corporation, to acquire the shares in certain of the Levine-connected entities listed below. I am advised that in that connection, we filed a request for a ruling from the Internal Revenue Service, which was favorably granted, but the transaction was not ultimately consummated.

At the risk of redundancy, I was not involved, nor did I supervise others who were, in the performance of legal services for the below-listed entities or the others mentioned above. To the best of my recollection, I became acquainted with these entities during the latter period of the firm's representation of them in connection with the Internal Revenue Service audits, and my participation culminated in the ending of the relationship in July 1986. Thereafter, as I stated at the April 21, 1988 hearing, I was involved with assisting partners who were asked to testify at the Tax Court proceedings in Los Angeles, California on July 22, 1986. Thereafter, I had discussions and correspondence with successor counsel regarding the turnover of the files and the representation.

Entity

Diene Synthesis, Inc.
Hecogenin Synthesis, Inc.
Steroid Intermediates, Inc.
Laserdisk Corporation
Glycine Intermediates, Inc.
Sulfonic Intermediates, Inc.
Cinolone Partners
Beta Chemical Partners
Alpha Chemical Partners
D M Partners
Chlorisone Partners
Perchloryl Partners

QUESTIONS ON RRI REALTY CASES

The following questions concern the three lawsuits listed in your response to the Committee's questionnaire in which you have been involved on behalf of RRI Realty Corporation. These questions are addressed to matters not within the attorney-client privilege, except to the extent that privilege has been waived. Also, since the third case listed is still pending before the federal courts, please indicate which of your answers, if any, should be maintained on a confidential basis for the use of the Committee in considering your nomination.

1. The following account of the inception of the federal case, RRI Realty Corp. v. Village of Southampton, appeared in the Southampton (NY) Press on December 17, 1987 (a copy of the press clipping is attached):

> In August of 1984, Mr. Trupin filed a $4.5 million federal civil rights lawsuit against the Village, only days after Mr. Trupin's lawyer submitted a seven-point settlement proposal.... In return, Mr. Trupin asked the village to make a quick decision -- 10 days according to Mr. Summit -- and to immediately lift the stop work order if it agreed to the proposal. The village eventually agreed to the offer 12 days after it was received but the settlement proposal was withdrawn because the village refused to lift the stop work order until all conditions were met, a stipulation Mr. Trupin refused to accept, Mr. Summit has said.

A. Is this an accurate summary of the events leading up to the filing of this lawsuit?

RESPONSE:

The quotation is not, to my recollection, an accurate summary of the events, particularly with its emphasis and omissions. I will state what I consider an accurate, and more complete, summary of those events, as a prelude to the specific responses that follow.

In July 1984, on my initiative, discussions were held concerning the outstanding differences between the Village and our client, in the hope of avoiding layoffs of construction workers, as well as the commencement of the Federal action. Apparent progress was made, leading the Village to request that I prepare a proposal summarizing our client's position on the topics discussed, and I did so. An important reason for our client's willingness to make concessions to the Village was that a stop work order on the construction project had been issued, which led to dozens of workers being idled. We were told that our client had kept on the payroll the most important workers to the project, hoping that the stop work order soon would be withdrawn or nullified by a court. By July 1984, the client told us that economic considerations would shortly compel him to terminate all of the remaining construction workers. The client informed us that it would be very difficult to again assemble so many highly-skilled workers, and at least the delay in doing so would be substantial. Therefore, during the discussions that were then had with various Village representatives, the client and I made clear to them that if substantial agreement were otherwise achieved, the stop work order should be suspended or withdrawn during the time necessary to fully implement a settlement.

On August 2, 1984, I personally delivered the attached letter of that date, to Orson Munn, at his New York City office, as he requested. (I have the client's permission to disclose this letter to the Senate Judiciary Committee, and to explain the circumstances surrounding it. Village representatives have previously publicly discussed its contents.) The letter requests a prompt decision on the proposal, and also states that our client requested that, if the Village was going to accept the proposal, the stop work order be promptly removed so that the work could recommence pending full implementation of the settlement. When I carried the letter to Mr. Munn on August 2, I told him that our client had informed me that if the Village did not accept the proposal within 10 days, it would be withdrawn. I told Mr. Munn that I hoped to be able to persuade the client not to insist on the 10 day limitation, but I did not know if I would succeed. I told Mr. Munn that removal of the stop work order would ease or eliminate the time pressure felt by the client. If he could arrange for its removal as a showing of good faith, the Village would not be seriously prejudiced because it had power to reinstate or issue a new stop work order at a later time if the settlement was not consummated. (The project required years of construction.) Mr. Munn and I had a discussion for approximately one-half hour during which he seemed to understand our client's position.

I have no recollection of the Village ever communicating its agreement to the settlement proposal. During the period between August 2 and August 14, 1984, I was told of various questions that Village representatives had raised about the proposal, that led me to have doubt that it would be accepted. I was ultimately told that the stop work order would not be suspended or removed pending consummation of the proposal, even if the proposal were accepted in principle. When I informed the client that the Village seemed to have some problems with the proposal and that, in any event, even if the proposal were accepted in principle, it might be months before it would be implemented and the stop work order removed, the client instructed me to withdraw the proposal.

Village representatives with whom we had dealt had been informed, probably in July 1984, that our client contemplated the commencement of a Federal action for substantial damages. I so stated in the context of my desire to attempt to settle all disputes before such an action was commenced. When the client instructed us to withdraw the settlement offer, we were also instructed to file the Federal action that had been prepared. It was filed on August 14, 1984.

I do not know whether the client would have withdrawn the proposal at that time, if we had received encouraging word from the Village with regard to the stop work order. I also do not recall whether the proposal was withdrawn on the tenth day, but it was withdrawn by the twelfth day after the letter was delivered.

B. How was the 10-day time limit on the settlement offer communicated to the Village officials?

RESPONSE:

As stated above, our client's statement in that regard was communicated to Mr. Munn on August 2, 1984. I may have informed other Village representatives as well, but I do not recall whether or not I did so.

C. Was the proposal that the Village "immediately lift the stop work order" explicitly included as part of the settlement offer? If not, when and how was it communicated to the Village officials?

RESPONSE:

I told Mr. Munn on August 2, 1984, that the possibility of the Village suspending or removing the stop work order was an important motivation for my client to make the settlement offer, and if the Village was not willing to do so pending final implementation of the settlement, which could take months, I doubted that our client would be willing to make the settlement. The settlement letter itself contains the request that the stop work order be "promptly" removed, if the Village found the proposal acceptable.

In any event, the Village representatives thereafter informed me that even if the proposal was acceptable, the stop work order would not be lifted until the settlement was fully consummated. I am reasonably certain that the Village representatives with whom I dealt understood that speed was important in this regard.

D. Was the settlement offer withdrawn because the Village's acceptance of it was considered not timely, or because of a dispute over the timing of the lifting of the stop work order, or both?

RESPONSE:

The events to which this question refers have been described in the prior responses.

2. These cases received extensive press coverage, and it has been reported to the Committee that problems related to press coverage recurred throughout this litigation, both in state court and in the federal case. Specifically, it has been alleged that on at least two occasions, matters discussed in private sidebar conference -- off the record discussions, in which only the lawyers and the judge participated -- were reported in the press within days after they occurred. These allegations were brought to the attention of both Judge Sifton, in the federal case, and Judge Lama, in one of the state court cases.

A. Please give the committee your recollection about the allegations of "leaks" to the press of discussions at sidebar that were presented to the state and federal court judges in these cases, and describe the actions taken by the courts in response.

RESPONSE:

The New York State building permit proceeding.

I do not know of any disclosure to the press of discussions at sidebar in this proceeding. I have discussed the question with my partner, Glenn S. Goldstein, who was with me throughout this trial, and he too recalls no question being raised regarding a disclosure to the press of a sidebar discussion.

In reviewing my recollection of the proceedings, I do recall a discussion during October 1984 with a reporter for the Southampton Press, a weekly newspaper that had been covering that trial. The reporter had been in court for most of the trial, but could not attend one day. I believe she had telephoned my office to find out what had happened in her absence, and I returned her call. In response to her questions, I quoted or referred to open-court testimony that had been given by an important adversary witness, in response to a question by the Court, to the effect that he had disobeyed or ignored advice or instruction from the counsel advising him in his official capacity during the events in suit.

Subsequently, after an oral motion to strike the witness' testimony was made, our adversary lawyers requested a chambers conference during which they complained of my having previously informed the reporter of the testimony. I believe, but I am not certain, that I informed our adversary lawyers of my conversation with the reporter, which prompted the chambers discussion. During the chambers discussion, I fully explained to the Court what had taken place. To the best of my recollection, the Court stated, in substance, that he had no intention of criticizing my conduct and did not intend to deal with that subject at all, but would appreciate all counsel not talking to the press for the balance of the trial in order to minimize tensions. I stated that I would comply with the Court's request, and I did. Subsequently my firm found precedent that made clear that there was no legal or ethical prohibition regarding my conversation with the reporter, which I called to the Court's attention in a subsequent chambers conference. The Court again stated that he had no intention of criticizing my conduct.

The Federal Action

I did not participate in the trial of the Federal action. I attended only one day of closing argument, and no incident regarding disclosure of a sidebar conference occurred then. I recall no sidebar conference during the pretrial phases of the action, when I was present. My partner, Glenn S. Goldstein, who was present throughout the trial, assisting Jacob Fuchsberg, has informed me of an incident where the Court thought there had been disclosure by one of the lawyers to the press of a discussion between the lawyers and the Court, but that did not appear to have been what happened. Mr. Goldstein's statement on the subject is attached hereto. Mr. Goldstein believes that a reporter was present in court during a discussion with counsel that took place in open court, and the reporter published what he heard. In any event, I know nothing of the incident and learned of it for the first time when I asked Mr. Goldstein if he knew of any event to which this question could possibly refer.

B. What guidelines should an attorney in a civil case follow in terms of providing information to the press? In particular, what action should a judge take if it appears that discussions in sidebar conferences have been communicated to the press during the pendency of a case?

RESPONSE:

1. The Code of Professional Responsibility, DR 7-107, states that a lawyer in a civil action should not make certain extrajudicial statements, "other than a quotation from or reference to a public record..." In the case of Markfield v. Ass'n of Bar of City of New York, 49 A.D. 2d 516, 370 N.Y.S. 2d 82 (1975) the Appellate Division, First Department of the New York Supreme Court held that the proscription of DR 7-107 could not be Constitutionally read to prohibit extrajudicial speech by a lawyer unless the speech presented a clear and present danger to the administration of justice. The Markfield decision related to a criminal case, where the concern regarding extrajudicial statements is obviously heightened.

I have had little experience with cases of material interest to the press. It would be presumptuous for me to attempt to formulate guidelines for attorneys involved in such matters that were any different than those contained in the Code of Professional Responsibility. Without attempting to formulate precise guidelines, and speaking only for myself, I do not believe I would seek press coverage for a case. However, if a case was being followed by the press, it might be appropriate for a lawyer to attempt to see that the coverage was fair and accurate, but even then he must be sensitive to the overiding duty to avoid any risk of impairment of a fair trial. Beyond that, as a personal matter, I would avoid comments to the press.

The Village of Southampton cases were unusual in this regard. Before I had any direct involvement in the disputes between the Village and our client, the subject had been covered extensively by the media. The Southampton Press, a local weekly, had regularly expressed the views of various Village officials and a local citizens organization negative to the client. There was even a paid advertisement published attacking the client. Defamatory rumors were reported about our client. Overall, under these circumstances it seemed appropriate to respond fairly and accurately to press inquiries.

2. I do not have a specific suggestion as to what action a judge should take if sidebar discussions are communicated to the press during the pendency of a case. Regulation of speech is a sensitive matter, probably not capable of universal rules. As stated above, to the best of my recollection I have never been involved with such a communication.

Certainly if a lawyer knows things are being said at sidebar (or anywhere else) in the reasonable expectation of confidentiality, that expectation should be honored as a matter of ethics and courtesy. If the judge or adversary's confidence has been betrayed, the judge will then have to consider what action is appropriate. The judge may conclude that the lawyer's conduct should be referred to the appropriate disciplinary body, and that nothing more should be done. If the offending lawyer's conduct has injured the prospect for a fair trial, thus possibly violating DR 7-107, the judge may have to declare a mistrial. Sanctions may also have to be considered. If the lawyer's comments to the press were untrue, or unfair, perhaps the judge should consider asking that lawyer to make a corrective statement. If the matters being discussed were not confidential, or not understood to be confidential, no action may be appropriate. Generally, such a determination would seem best handled on a case-by-case basis, balancing the obligations of the lawyer to the administration of justice and the First Amendment protection.

3. The article in the Southampton Press quoted in the first question also describes proceedings before Judge Sifton on what appears to be a motion you filed shortly before trial to amend the complaint to hold the individual defendant Village officials personally liable for compensatory and punitive damages. The article reports that the judge made the following comments in the course of denying the motion:

> I'm really appalled that a lawyer would make a claim of this sort this late in the lawsuit against individuals without any more attention to what you are doing than what you have made in these papers....

A. Does the article accurately report the proceedings on the motion to amend the complaint?

RESPONSE:

Attached herewith is a statement by my partner, Glenn S. Goldstein, with respect to this question.

Mr. Goldstein had grown into a signficant role in the case at the time, made the motion in question following consultation with the client and was present in court when District Judge Sifton made his statement. In substance, Mr. Goldstein believed that our client was entitled to the relief requested and that Judge Sifton's comments reflected an erroneous view of the timing and merits of the motion. Whether an appeal will be taken from Judge Sifton's decision in this regard is now under consideration. (It may be relevant to note that among the legal fees that Judge Sifton awarded the client were the legal fees incurred in the making of this motion. This could be interpreted to bear on whether, upon reflection, he considered it as meritless as the quoted statement might suggest.)

While Mr. Goldstein and I had generally discussed the motion some time before it was made, I did not participate in the preparation of the papers to support the motion, I did not argue the motion, and I was not present during any court proceedings relevant to the motion.

B. Please provide any additional information which you believe would assist the Committee in evaluating this aspect of your conduct of this litigation.

RESPONSE:

I believe the prior answer contains all the information necessary to evaluate my role in connection with this motion.

4. It has been reported to the Committee that, because of the pendency of your nomination to the Second Circuit Court of Appeals, you did not actively participate in the trial of the Southampton case, which took place in a federal court subject to review by the Second Circuit.

However, it has been reported to the Committee that you remained an active participant in the litigation except for the purposes of presenting evidence and argument at the trial. for example, it has been reported that you participated in bench conferences with the trial judge during the course of trial, and you have been quoted as recently as late March in press accounts of your client's settlement position in the case.

Please explain why you withdrew from active participation in the trial of the case. Please describe the extent to which you have remained active in this litigation, and explain why you concluded that such activity was consistent with your status as a nominee to the Second Circuit.

RESPONSE:

By December 1987, I concluded that I should not try the federal action because of my nomination to the Court of Appeals. I had requested one of this firm's associates examine the law on the subject, and she informed me that she was unable to find any rule, ethical opinion or other prohibition suggesting that I not try a case within the Circuit. I consulted other lawyers, who advised that they knew of no prohibition. It seemed to me, nonetheless, that there could be an appearance of unfairness were I to try a case within the Circuit. A district judge might find it awkward, adversary counsel might consider himself at a disadvantage. After weighing the question, I concluded that the best approach was not to personally conduct court proceedings within this Circuit. Therefore, I have not personally appeared and participated in any proceeding before any Federal court in the Second Circuit since September 24, 1987, the day of my nomination.

In the absence of a rule or ethical guideline on the subject of which I was aware, and given the need to be useful to my partners and clients while awaiting the Senate confirmation process, I concluded that it would be appropriate to appear in state courts and Federal courts outside of this Circuit. It also seemed appropriate to participate in the drafting of papers, the analysis and planning of cases, counseling of clients and settlement discussions.

In addition, with respect to the Village of Southampton case, there might have been a logistical problem if I had intended to try the case. The trial was set for and actually commenced in February 1988, and a decision had to be made sufficiently in advance to permit trial counsel to prepare.

The role I thereafter played in the Village of Southampton case was consistent with that decision. Even prior to December 1987, Glenn Goldstein was gradually taking over from me the principal role in the pretrial phases of the case. He thereafter helped prepare and assisted the trial counsel, Jacob Fuchsberg. When Mr. Goldstein, Mr. Fuchsberg or our client wanted my advice with regard to the handling of any question, I gave it. My regular participation was limited to receiving a report from Mr. Goldstein as to how the trial was going when he returned to the office from court. The Southampton Press called me with questions from time to time as they apparently did with adversary counsel, and to the extent I thought the particular question appropriate, I answered. Generally, its questions sought comment from me on comments previously made by a Village official or adversary counsel. I advised it of the jury verdict. I do not recall responding to any questions during this period, or having any other communications about the case, other than from or with the Southampton Press.

I did not participate in any bench conference with the trial judge during the course of the trial. I attended only one day of the trial, in order to hear Mr. Fuchberg's summation to the jury. I sat in the rear of the spectators' section of the courtroom. During the course of that day, a settlement was discussed among certain of the adversary counsel and our client. Since I was there, I attempted to be helpful and indeed a settlement seemed to be reached. The Village announced its rejection of the settlement in a discussion with the trial judge during a jury recess, and I stood in the back of a group of many lawyers surrounding the bench in order to hear what had happened to the settlement I thought was achieved. I said nothing to the trial judge.

After the trial was concluded, it became necessary for me to submit an affidavit in support of our client's application for litigation expenses. A portion of the amount being sought by our client was attributable to my time, and it was necessary for me to justify my time and the cost thereof. In addition, an application was being made for the value of Mr. Fuchsberg's services and it seemed necessary for me to explain the necessity for bringing him into the case. Further, because I was the lead lawyer for our client for most of the case, and one of the senior partners of this firm, it seemed necessary to justify the time and the cost thereof by others working on the matter under my supervision.

In sum, I attempted in good faith to avoid an appearance of impropriety in the conduct of this litigation after the nomination, without substantial injury to our client. A judgment call had to be made on the question of what I should and should not do, and I made that judgment call to the best of my ability at that time.

[From Southampton (NY) Press, Dec. 17, 1987]

TRUPIN LOSES COURT ROUND, TRIAL IS SLATED FOR FEBRUARY

A judge has rejected Barry Trupin's bid to make various Southampton Village officials personally liable in his $4.5 million federal civil rights lawsuit and scheduled a jury trial on the case for February 1, 1988. The judge's ruling leaves only the village liable for compensatory damages.

Also, the village will soon submit a motion asking the judge to dismiss the case entirely because Mr. Trupin has not responded to a request to specifically itemize the $4.5 million claimed in damages.

Mr. Trupin filed his federal lawsuit against the village, certain boards and certain individuals in August 1984 after the village stopped a massive renovation project at his Meadow Lane mansion for its lack of a building permit and height code violations.

Even though individual village officials were named in the court papers and they have been worrying for years now about their personal liability in the case, it was only when Mr. Trupin's lawyer filed formal motions this summer to seek punitive and compensatory damages from them and their liability became an issue in court. In no uncertain terms, the judge rejected the motions, saying it's too late in the court process for Mr. Trupin to amend his suit.

In a ruling issued on Monday, December 7, in United States District Court in Brooklyn, Judge Charles P. Sifton refused four separate motions by Mr. Trupin and indicated that he may dismiss Mr. Trupin's lawsuit if he does not respond to the village's request for a precise detailing of the $4.5 million in claimed damages.

"If you don't get a statement of what consequential damages are in response to discovery, well then, there won't be any issue as pertains to consequential damages," Judge Sifton told the counsel for the village in court, according to a transcript read over the phone by the lawyer.

Edward Brodsky, a Manhattan attorney who specializes in federal litigation and real estate law who was retained by the village to bolster its defense in the case, said he was pleased by Judge Sifton's denial of Mr. Trupin's motions. He said the village will now submit a motion to dismiss the case because Mr. Trupin has failed to answer its request for an account of claimed damages.

"If he doesn't have damages, he doesn't have a case," Mr. Brodsky said in a phone conversation Tuesday. "We may get a foreclosure of issues. That could be the end of the ballgame."

Stuart Summit, Mr. Trupin's Manhattan attorney, downplayed the significance of Judge Sifton's ruling and said Mr. Trupin wanted to include individuals in the suit and sought punitive damages from them simply because he wanted to win more money in the judgment.

"We would rather have been able to amend the complaint" to make the individuals subject to damage claims "but the judge felt it would interfere with a speedy trial," Mr. Summit said Tuesday. "We didn't think it would, but it's what the judge says that counts. If I were Ed Brodsky I'd be pleased with the results. It's the first motions of any kind that they've won. It's like Columbia University [which set an NCAA Division I record for consecutive losses] winning a football game."

Mr. Summit assured that his client would provide the itemization of damages requested by the village. "It's being worked on by a real estate expert," he said. "We will answer them very soon."

If Mr. Trupin responds to the village's request and a trial begins as scheduled, Judge Sifton's rulings mean that Mr. Trupin will only be able to seek $4.5 million from the village and can't seek compensatory damages from individuals named in the lawsuit or punitive damages from the village or the individuals. Mr. Trupin has not asked for punitive damages from the village.

In four separate rulings, Judge Sifton:

—Denied Mr. Trupin's motion to amend his complaint to sue defendants in an individual capacity, meaning that the personal assets of the individuals are not subject to judgment.

"I'm really appalled that a lawyer would make a claim of this sort this late in the lawsuit against individuals without any more attention to what you are doing than what you have made in these papers," Judge Sifton said in court.

—Denied Mr. Trupin's motion to seek punitive damages from individuals named in Mr. Trupin's lawsuit, meaning that the personal assets of the individuals are protected from an award in excess of Mr. Trupin's claimed damages. "I'm going to deny motion to amend significantly because it fails to state a cause of action either for personal liability or for personal damages and for significantly failing to state a claim," Judge Sifton said.

—Denied Mr. Trupin's motion for a summary judgment in his favor on his complaint that Anthony Tohill, the former Architectural Review Board attorney, under a claimed protection of attorney-client privilege, refused to answer some questions submitted by Mr. Trupin's attorney. Judge Sifton, however, ordered Mr. Tohill to answer some of the questions.

—Denied Mr. Trupin's motion for a summary judgment in his favor on the basis of his charge that Dr. Sherburne Brown, chairman of the Architectural Review Board, failed to answer questions submitted by Mr. Trupin's attorney. Judge Sifton sanctioned Dr. Brown and ordered him to answer the questions.

"We view that we won both of those motions," Mr. Summit said of the last two matters. "We got what we wanted."

Mayor William J. Hattrick Jr., who has described the lawsuit as "the most serious threat now facing this village," was the village Appeals Board chairman at the time Mr. Trupin's lawsuit was filed and was named as a defendant in the original submission. He expressed relief that he and others named won't be personally liable.

In a related matter, it is unclear if Mr. Summit will be able to represent Mr. Trupin in a jury trial. President Ronald Reagan has nominated Mr. Summit to the United States Court of Appeals Second Circuit bench and is he now awaiting confirmation by the United States Senate. If the nomination is approved, he will not be able to represent Mr. Trupin in his lawsuit.

Mr. Trupin, 51, was born in Brooklyn and built his fortune arranging financial investment ventures in maritime charters and equipment leasing, oil and gas exploration and development, and commercial real estate. He purchased the former Henry duPont estate on Meadow Lane in 1979 for $700,000 and launched a multimillion dollar project to renovate the 63-room, 42,000-square-foot, whitewashed brick Georgian mansion into the style of a French chateau.

Much of the work was done without a village building permit and some alterations to the structure violated a 1980 village Appeals Board limit on the height of the structure.

In 1983 and 1984, Mr. Trupin sought to legalize the structure and continue working on the project, but the village Appeals Board refused to grant new height waivers and the village Architectural Review Board declined to approve plans while the violations still existed. Building inspector Eugene Romano, who refused to issue a building permit for the project because complete plans were not submitted, issued a stop work order in May 1984.

In response, Mr. Trupin filed two state Supreme Court lawsuits against the village—one seeking to overturn the stop work order and having a building permit issued for the conforming aspects of the project and another calling for a height variance to be issued.

In August of 1984, Mr. Trupin filed a $4.5 million federal civil rights lawsuit against the village, only days after Mr. Trupin's lawyer submitted a seven-point settlement proposal in which he offered to lower the height of the non-conforming cupola, raise the grade around part of the house to make other points on the roof line conform to height limits, drop plans to add decorative chimney caps, and promise not to subdivide the property. Mr. Trupin also offered to reimburse the village up to $30,000 in legal fees and give the village a small piece of property across the street from the estate.

In return, Mr. Trupin asked the village to make a quick decision—10 days according to Mr. Summit—and to immediately lift the stop work order if it agreed to the proposal.

The village eventually agreed to the offer 12 days after it was received but the settlement proposal was withdrawn because the village refused to lift the stop work order until all conditions were met, a stipulation Mr. Trupin refused to accept, Mr. Summit has said.—Dean Mosiman.

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WRITER'S
DIRECT DIAL NUMBER

August 2, 1984

Orson Munn, Esq.
Trustee
Village of Southampton
c/o 630 Fifth Avenue
Suite 3508
New York, New York

Dear Mr. Munn:

We are the attorneys for R.R.I. Realty, Inc. ("R.R.I."), together with Bourke and Flanagan of Southampton. This letter is being submitted to you on behalf of R.R.I., pursuant to its authorization. The purpose of this letter is to set forth the terms of a proposal by which R.R.I. would settle with the Village of Southampton the outstanding disputes regarding its property located on Meadow Lane, known as Dragon's Head. While we have had discussions with you regarding this proposal, we recognize that there has not been actual agreement upon its terms. Therefore, this letter should be viewed as nothing more than a proposal, without prejudice to the position of R.R.I., and it and its contents are to be kept confidential, and not publicized, disseminated, or otherwise disclosed, except to Village officials necessarily involved in a settlement, and their attorneys, and not used in any court proceeding, without advance written consent of R.R.I.

R.R.I. deeply regrets the controversy that has developed regarding the house. While not believing that various public statements regarding

R.R.I's conduct, or that of certain Village officials, were in any way justified, it regrets, as I am certain you do, the acrimony and the division within the Village that has resulted. While R.R.I. has been forced to commence legal proceedings against the Village and certain of its officials, and to prepare for the commencement of further litigation, it would be pleased to resolve the outstanding disputes in a manner beneficial to the Village, as it did not intend to be other than a good and valuable citizen of the Village. The investment it has made and intends to make in the Village certainly requires it to have the long-term best interests of the Village in mind.

Accordingly, R.R.I. makes the following proposal by which all pending disputes between the Village, its various boards and agencies, would be resolved:

I. The height of the southwest cupola would be lowered to a point no higher than about 51 feet, 6 inches measured from the existing grade on the north side of the house;

II. The existing average elevation of the grade on the north side (front) of the house would be substantially raised, by about four to five feet, starting from the two hillocks or high points on the north side of the property; the new grade will be attractively landscaped to become a natural part of the north side environment. The new grade would not be brought to the porch on the north side of the property, the porch not being considered the front of the house for this purpose;

III. R.R.I. would not pursue its plan to add substantial decorative chimney caps to the premises;

IV. R.R.I. would agree that there would be no subdivision of the premises so long as the house now under construction stands;

V. R.R.I. would reimburse the Village the actual amount of its lawyer's fees and disbursements incurred specifically in connection with various building applications, Zoning Board of Appeals hearings, Architectural Review Board hearings, and legal proceedings, relating to the house, to a maximum amount of $30,000;

VI. R.R.I. will arrange for the conveyance to the Village of the premises located on Shinnecock Bay, on the north side of Meadow Lane, across from the premises known as Ocean Castle.

VII. R.R.I. on the one hand, and the Village and its officials on the other, would agree that no claims would be pursued against the other based on past events or conduct.

Because of the stop work order now in effect regarding R.R.I.'s premises, we request that the Village advise us of its decision to accept or reject this proposal at the earliest possible time. In the event that the Village determines to accept the proposal, we request that the stop work order be promptly removed so that work may recommence pending the full consummation of the settlement.

Very truly yours,

Stuart A. Summit

SAS:swh

STATEMENT OF GLENN S. GOLDSTEIN

I worked closely with Stuart A. Summit on all of the litigations involving the Village of Southampton. With time, my responsibility on the cases increased and, after Mr. Summit's nomination, I assumed primary responsibility for handling the federal action (the other litigations had been concluded by then).

1. Mr. Summit has asked me to state my recollection of any disclosures of sidebar discussions, either in the building permit proceeding in the state court or in the federal action.

I do not know of any disclosures of sidebar discussions with the judge in the state court proceeding. I do recall Mr. Summit contemporaneously telling me that he had had a discussion with a reporter covering the trial about the testimony of a witness given on the record during the trial. I have read Mr. Summit's account of that event and, to my recollection, it is entirely accurate.

In the federal action, I recall Judge Sifton commenting to the lawyers at one point about an article which appeared in a newspaper which referred to discussion held at sidebar after the jury had been dismissed one day. The judge thought that there had been a disclosure of the discussion, and asked that the lawyers refrain from speaking with the press.

However, to my knowledge, there was no such disclosure. I believe that the sidebar discussion in question was conducted at a volume of voice sufficient to enable a reporter whom I saw sitting in the front row of the spectator gallery to overhear it. After the judge commented, I told him that the discussion was likely overheard by the reporter, and the judge acknowledged that possibility.

2. Mr. Summit also asked me to discuss my reasons for moving to amend the complaint. The motion to amend was made shortly after the completion of all of the depositions of the defendants in order to add a request for punitive damages against certain of them. I based my decision to add a punitive damages request upon the admissions made by those defendants during their depositions.

In reviewing the complaint in order to prepare the motion, I noticed that it did not state that the individual defendants had been sued in their personal capacity (a prerequisite for punitive damages). While the complaint did allege that the individual defendants' acts were made in their official capacity, we had always assumed, and the reality of the conduct of this litigation always was, that the individual defendants' personal liability was at stake.

Indeed, the individual defendants had continuously maintained as an affirmative defense that they were immune from suit (which defense is only applicable in personal liability suits), and had even moved (unsuccessfully) to dismiss the complaint against them on immunity grounds. Moreover, rather than hire one law firm to represent them, which is all that would have been required had the suit been an "official capacity" suit, five firms were hired to represent them, one for the Village, one for the building inspector and one each for the members of each of the three boards whose members were defendants.

Since a court-imposed final deadline to make motions in the case was fast approaching, I moved to amend the complaint to conform it to the intent and practice of the parties by clarifying the relevant allegation to indicate that defendants' acts were made in their official as well as personal capacities.

I believe that Judge Sifton's discussion of the merits and timing of the motion was erroneous. Indeed, in his ruling, Judge Sifton mentioned the possibility of my moving for reconsideration, and I subsequently did so. (That motion was denied as well.) We are now considering whether to appeal from the denial of the motion to amend. Attached hereto is a copy of the memorandum of law in support of the motion for reconsideration, which summarizes our points on the motion to amend.

It bears noting that, in awarding our client its legal fees and costs, Judge Sifton did not make any reductions for time spent either on the motion to amend or on the motion for reconsideration of his denial of the motion.

I hereby attest that the statements made above are accurate, to the best of my knowledge and belief.

Dated: May 17, 1988

Glenn S. Goldstein

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

RRI REALTY CORP.,

Plaintiff,

-against-

THE INCORPORATED VILLAGE OF SOUTHAMPTON, ROY L. WINES, JR., Mayor, ORSON D. MUNN, JR., PAUL PARASH, CHARLES F. SCHREIER, JR., and RICHARD L. FOWLER, Constituting the Board of Trustees of the Village of Southampton, WILLIAM HATTRICK, JR., CARLOS NADAL, JACOB BUCHHEIT, ELISE KORMAN and MARVIN DOZIER, Constituting the Zoning Board of Appeals of the Village of Southampton, SHERBURNE BROWN, COURTLAND SMITH, VICTOR FINALBORGO, JOHN WINTERS and MORLEY A. QUATROCHE, Constituting the Board of Architectural Review of the Village of Southampton, and EUGENE R. ROMANO, the Building Inspector of the Village of Southampton,

Defendants.

84 Civ. 3382 (CPS)

MEMORANDUM IN SUPPORT OF PLAINTIFF'S MOTION FOR RECONSIDERATION OF PRIOR RULING

Plaintiff RRI Realty Corp. submits this memorandum in support of its motion for partial reconsideration of its prior motion to amend the amended complaint.

In its prior motion, RRI sought to add a claim of punitive damages. In preparing the motion, RRI realized that paragraph 9 of the amended complaint provided, in part, that defendants' acts "were made in their official capacities." Since punitive damages are not available against a municipality (Newport v. Fact Concerts, Inc., 453 U.S. 247 (1981)), RRI sought to clarify its pleading by making it clear that defendants' personal liability was at stake. Accordingly, RRI sought to amend ¶ 9 of the amended complaint to read, in relevant part, that defendants' acts "were made in their personal as well as official capacities."

"[T]o establish personal liability in a § 1983 action, it is enough to show that the official, acting under color of state law, caused the deprivation of a federal right." Kentucky v. Graham, 473 U.S. 159, 166 (1985). These items are pleaded against the individual defendants in the amended complaint. Thus, the complaint sufficiently sets forth a claim of personal liability.

In addition, RRI seeks to hold the Village liable. Thus, RRI alleged that the acts of the defendants were made in their official capacities. "Official-capacity suits, in contrast, 'generally represent only another way of pleading an action against an entity of which an officer is an agent.'" Kentucky, supra, 473 U.S. at 165 (citation omitted).

RRI thus sought, in the amended complaint (and in the original complaint), to hold both the individual defendants and the Village liable. If the pleading was less than clear, then the course of proceedings must be examined to determine the nature of liability: "In many cases, the complaint will not clearly specify whether officials are sued personally, in their official capacity, or both. 'The course of proceedings' in such cases typically will indicate the nature of the liability sought to be imposed." Kentucky, supra, 473 U.S. 167 n. 14 (citation omitted).

In ruling against RRI's motion to amend the complaint to assert a punitive damages claim, the Court stated that the complaint failed to state a cause of action for personal liability. It is requested that that ruling be reconsidered, and that upon reconsideration the Court establish that personal liability is in issue.

The course of proceedings requires no less. First, the defendants have consistently asserted defenses of immunity, which defenses are only applicable in personal liability cases. Kentucky, supra. Defendants have moved for summary judgment on immunity grounds. Those motions were denied, not because defendants' personal liability was not in issue, but because they were not entitled to immunity.

Second, after their immunity motion was denied, defendants hired four additional law firms to represent them. In support of their application to add new counsel, defendants relied on Dunton v. County of Suffolk, 729 F.2d 903 (2d Cir. 1984) in which it was held that one lawyer's representation of an entity and an official, in a § 1983 suit alleging both personal liability against the individual and offical liability against the entity, was a conflict of interest. Defendants clearly perceived that their personal liability was at stake and that the same conflict would arise if one firm were to represent the Village and the individual defendants.

Finally, many of the individual defendants have made motions for summary judgment in which they claimed that there is insufficient proof to hold them liable in this case. Clearly, they have perceived this to be a personal liability case.

In sum, this case has proceeded since its inception as if personal liability were at stake. It would neither surprise nor prejudice the individual defendants to rule, as RRI requests, that the amended complaint be further amended to clarify that they may be held personally liable.

Dated: New York, New York
January 28, 1988

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United States Senate
COMMITTEE ON THE JUDICIARY
WASHINGTON, DC 20510-6275

May 20, 1988

Stuart Summit, Esq.
Summit, Rovins and Feldesman
445 Park Avenue
New York, NY 10022

Dear Mr. Summit:

In our telephone conversation yesterday, I noted that the Judiciary Committee had received several allegations concerning the activities of your client, Barry Trupin. We discussed your role, and that of your firm, in representing Mr. Trupin and certain entities controlled by him.

In order to supplement the record of the Committee's consideration of your nomination, please respond in writing to the following questions concerning this matter. Your responses should omit any information subject to the attorney-client privilege unless the privilege has been waived.

1. Apart from the litigation between Mr. Trupin and various governmental agencies of the Village of Southampton, described in your response to the Committee's questionnaire, has your law firm represented Mr. Trupin, and/or any entities established or controlled by him, in the following matters:

(a) The establishment and promotion (including the preparation of opinion letters) of entities controlled by Mr. Trupin, including but not limited to the entities listed in the enclosure to this letter.

(b) Investigative or enforcement proceedings initiated by any federal or state agency with respect to Mr. Trupin and/or entities controlled by him, including but not limited to the entities listed in the enclosure to this letter.

(c) Litigation brought against Mr. Trupin and/or entities controlled by him, including but not limited to the entities listed in the enclosure to this letter.

If so, please describe briefly the nature of your firm's representation of Mr. Trupin and/or his entities, and identify the attorney in your firm who was principally responsible for such representation. As to each matter described in items (b) or (c) above, please provide the name, address and telephone number of the principal attorney for the federal or state agency, or private opposing litigant, as the case may be.

Stuart Summit, Esq.
May 20, 1988
page two

2. As to the matters identified in response to the preceding question, please indicate the matters (if any) in which you were personally involved in representing Mr. Trupin and/or entities controlled by him, and describe briefly your role in such representation.

3. Have you ever invested in any entities established and/or controlled by Mr. Trupin, including but not limited to those listed in the enclosure to this letter? Have you ever had any business relationship with Mr. Trupin other than an attorney-client relationship? If so, please provide details.

Please deliver your response to this questions, along with your attestation as to their accuracy, to the Committee in Room SD-224, Dirksen Senate Office Building, Washington, DC 20510. Of course, if you have any questions concerning this request, please do not hesitate to call me, at (202) 224-8191.

I appreciate your willingness to discuss these matters in our conversation yesterday, and your offer to provide written responses on these topics. Thank you for your continued cooperation.

Sincerely yours,

Steven J. Metalitz
Chief Nominations Counsel

encl

ENCLOSURE TO LETTER OR MAY 20, 1988 TO STUART SUMMIT, ESQ.

The following entities are among those alleged to have been established and/or controlled by Barry Trupin:

Rothschild Registry
Rothschild Registry International
Rothschild Reserve
Rothschild International
Rothschild Realty Partners 118 (Limited Partnership)
Mellon Equities
Cornwall Financial Group
Charter House
R.R.R.I. XX Management Corporation
R.R.I. - SynTech LXXX-A
Richmond Center Associates
Amtax Management Corporation
Amtax Planning Corporation
Amplex
R.R.I. SynTech XXXII
R.R.I. SynTech XLIV
Syntech 31
Syntech 32
Syntech 33
Syntech 44
Syntech 47
A.E.C. 0800
A.E.C. 0801
A.E.C. 8001
U.K.A. 8001
U.K.A. 4001
Prudential American Corporation
Paragon Funding
Paragon Leasing
Paragon Service Corporation
Tarat Properties
Tara T Yacht Chartering
Rothschild Collection
Tarat Equities
Atlantic Computer (U.K. corporation)
Funding Systems International
Carena Computers
GGC Leasing, Ltd.

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—
CABLE BURNLEX
TELEX 14-8376

May 31, 1988

FEDERAL EXPRESS

Hon. Steven J. Metalitz
Chief Nominations Counsel
United States Senate
Committee on the Judiciary
Dirksen Senate Office Building
Room SD-224
Washington, DC 20510

Dear Mr. Metalitz:

As I mentioned to you on the telephone this morning, your letter of May 20, 1988 arrived on May 26 in the afternoon. Also as I mentioned, the comprehensiveness of the questions regarding the work done by this law firm for Trupin-affiliated entities will require some additional time. I appreciate, therefore, your willingness to accept in the meantime the enclosed initial response to the second set of supplemental questions. The enclosed initial response answers all of the questions insofar as they relate to my own conduct.

Pursuant to your request, I hereby attest that the statements made in the enclosed response are accurate to the best of my knowledge and belief.

Respectfully,

Stuart A. Summit

SAS:dlj

Enclosure

INITIAL RESPONSE TO SECOND SET OF SUPPLEMENTAL QUESTIONS

1. Apart from the litigation between Mr. Trupin and various governmental agencies of the Village of Southampton, described in your response to the Committee's questionnaire, has your law firm represented Mr. Trupin, and/or any entities established or controlled by him, in the following matters:

(a) The establishment and promotion (including the preparation of opinion letters) of entities controlled by Mr. Trupin, including but not limited to the entities listed in the enclosure to this letter.

(b) Investigative or enforcement proceedings initiated by any federal or state agency with respect to Mr. Trupin and/or entities controlled by him, including but not limited to the entities listed in the enclosure to this letter.

(c) Litigation brought against Mr. Trupin and/or entities controlled by him, including but not limited to the entities listed in the enclosure to this letter.

If so, please describe briefly the nature of your firm's representation of Mr. Trupin and/or his entities, and identify the attorney in your firm who was principally responsible for such representation. As to each matter described in items (b) or (c) above, please provide the name, address and telephone number of the principal attorney for the federal or state agency, or private opposing litigant, as the case may be.

2. As to the matters identified in response to the preceding question, please indicate the matters (if any) in which you were personally involved in representing Mr. Trupin and/or entities controlled by him, and describe briefly your role in such representation.

3. Have you ever invested in any entities established and/or controlled by Mr. Trupin, including but not limited to those listed in the enclosure to this letter? Have you ever had any business relationship with Mr. Trupin other than an attorney-client relationship? If so, please provide details.

INITIAL RESPONSE:

In order to respond to these questions as promptly as possible, this initial response pertains to my participation in the representation of Mr. Trupin or entities in any way affiliated with him. Since the law firm has represented him for a substantial period of time, and in many matters in which I had no participation, it seems most expeditious for me to respond to these questions first as to my own involvement. I will supply the further information regarding all of the matters handled by the firm as soon as possible. Mr. Metalitz agreed on the telephone today that this would be a useful method of responding to these questions.

Apart from the Village of Southampton litigation, the only matter upon which I was the principal or lead lawyer, or otherwise had substantial personal involvement, was Matter of St. Francis de Sales of New York City (Trupin), the decision in which is reported at 110 Misc. 2d 511 (Sup. Ct., N.Y. Co. (1981)). The case was tried by me to the Court without a jury, and involved a contract for the purchase of real property in Manhattan between Mr. Trupin and the church. The Court held in Mr. Trupin's favor that he was entitled to require a transfer of the house for which he had contracted. Adversary counsel were, Joseph E. Moukad, of Cusack, Stiles & Hale, 61 Broadway, New York, NY (212) 480-0400, for the Church and Ernest H. Hammer, 26 Broadway, New York, NY (212) 425-5928, for Mark Hertzan, who intervened informally.

In addition, on behalf of Tarat Properties Corporation, I gave advice and dealt with other lawyers regarding complex issues arising out of the sale of computers by Nixdorf Computer Corporation, and the obligations of Tarat and Nixdorf as affected by the bankruptcy of an intermediate purchaser. The lawyers with whom I dealt were David L. Weltman of Foley Hoag & Eliot, One Post Office Square, Boston, MA 02109 (617-482-1390), for Nixdorf and Francis E. Kenny, Nixon, Hargrave Devans & Doyle, Lincoln First Tower, Rochester, NY 14603 (716-546-8000). After my initial involvement, the matter was handled for Tarat Properties by my partner, Ira Greenberg, and was ultimately resolved without litigation.

To the best of my knowledge, with the exception of those matters and the Village of Southampton cases, my personal involvement in the representation of Mr. Trupin or entities affiliated with him, was to give occasional advice to the lawyers in this office who were handling litigation for him or his affiliated companies. I may have spoken directly to a client representative on the same basis. In that regard, my role was the same as with regard to other clients' cases being handled by this firm but not specifically by me.

I have never invested in any entities established or controlled by or in any way affiliated with Mr. Trupin, including but not limited to those listed in the enclosure to the Committee's letter dated May 20, 1988.

I have never had any business relationship with Mr. Trupin, or any such entity, other than an attorney-client relationship.

SUMMIT ROVINS & FELDESMAN
445 PARK AVENUE NEW YORK 10022
—
212-702-2200

STUART A. SUMMIT
(212) 702-2211

A PARTNERSHIP INCLUDING
PROFESSIONAL CORPORATIONS
—
TELECOPIER
212-702-2295
212-702-2290
—
CABLE BURNLEX
TELEX 14-8376

June 4, 1988

FEDERAL EXPRESS

Hon. Steven J. Metalitz
Chief Nominations Counsel
United States Senate
Committee on the Judiciary
Dirksen Senate Office Building
Room SD-224
Washington, DC 20510

Dear Mr. Metalitz:

Enclosed is my further response to the second set of supplemental questions that were included in your letter dated May 20, 1988. So far as I am aware, based on the advice and record search of my partners, I have now answered those questions fully. That is, when the initial response sent to you on May 31, 1988, is combined with the enclosed one, you will have all of the information sought by the questions.

The initial response included all of the information about my own work, and the enclosed further response includes all of the information regarding the firm's work in which I had no particular participation.

As requested, I hereby attest that the statements made in the enclosed response are accurate, to the best of my knowledge and belief.

Should there be any further questions, please telephone me, so that we can avoid any further delay. Thank you.

Respectfully,

Stuart A. Summit

SAS:dlj
Enclosures

FURTHER RESPONSE TO SECOND SET OF SUPPLEMENTAL QUESTIONS

1. Apart from the litigation between Mr. Trupin and various governmental agencies of the Village of Southampton, described in your response to the Committee's questionnaire, has your law firm represented Mr. Trupin, and/or any entities established or controlled by him, in the following matters:

(a) The establishment and promotion (including the preparation of opinion letters) of entities controlled by Mr. Trupin, including but not limited to the entities listed in the enclosure to this letter.

(b) Investigative or enforcement proceedings initiated by any federal or state agency with respect to Mr. Trupin and/or entities controlled by him, including but not limited to the entities listed in the enclosure to this letter.

(c) Litigation brought against Mr. Trupin and/or entities controlled by him, including but not limited to the entities listed in the enclosure to this letter.

If so, please describe briefly the nature of your firm's representation of Mr. Trupin and/or his entities, and identify the attorney in your firm who was principally responsible for such representation. As to each matter described in items (b) or (c) above, please provide the name, address and telephone number of the principal attorney for the federal or state agency, or private opposing litigant, as the case may be.

RESPONSE:

In my initial response to these questions, dated May 31, 1988, I described my own role in representing Mr. Trupin or such entities in these regards. The response that follows therefore relates to this firm's representation of Mr. Trupin or such entities, and not my own participation therein. Necessarily, therefore, these responses are not based on my own knowledge, but rather are on the basis of recollection of others and their examination of the files, in some cases relating to matters handled as long ago as 1977.

(a) From 1977 to 1979, this firm provided services to the entities listed immediately below. In general, the work performed consisted of organization of the entities, assistance in the preparation of a private placement memorandum including the appropriate related work necessary thereto, and rendering a legal opinion describing potential tax consequences of the investment. The lawyers principally responsible for the work were William Greilsheimer, formerly of this firm, and my partner, Stephen R. Field.

RRI Syn-Tech XVIII
RRI Syn-Tech XXI
RRI Syn-Tech XXII
RRI Syn-Tech XXX
RRI Syn-Tech XXXI
RRI Syn-Tech XXXII
RRI Syn-Tech XXXIII
RRI Syn-Tech XXXIV
RRI Syn-Tech XL
RRI Syn-Tech XLI
RRI Syn-Tech XLII
RRI Syn-Tech XLIII
RRI Syn-Tech XLV

(b) The response to (b) is divided between (1) tax audit representation and (2) other such governmental proceedings.

(1) In the years 1977-1981, this firm acted on behalf of those partners of the entities listed below who had received 30-day letters from the Internal Revenue Service. I am advised, in general, the services consisted of filing protests on behalf of those persons and, with respect to partners who had received 90-day letters, filing petitions with the U.S. Tax Court. Settlements were negotiated with the Internal Revenue Service. I am advised that, while the firm dealt with many different examination agents, appellate officers and District Counsel, the settlements were determined based on a uniform settlement approach. That uniform approach was negotiated with Harris

Fisher, a New York appeals officer (212-264-7949). I am advised that District Counsel's office was also initially involved in reaching the settlement outline, the firm dealing with Robert Marino, then in New Jersey but now in the New York District Counsel's office (212-264-0270). The lawyers who dealt with the Internal Revenue Service on behalf of this firm were either or both of Stephen R. Field and Joseph L. Cannella.

RRI Syn-Tech XVIII
RRI Syn-Tech XXI
RRI Syn-Tech XXII
RRI Syn-Tech XXX
RRI Syn-Tech XXXI
RRI Syn-Tech XXXII
RRI Syn-Tech XXXIII
RRI Syn-Tech XXXIV
RRI Syn-Tech XL
RRI Syn-Tech XLI
RRI Syn-Tech XLII
RRI Syn-Tech XLIII
RRI Syn-Tech XLIV
RRI Syn-Tech XLV
RRI Syn-Tech XLVII
RRI Syn-Tech XLIX

In addition, in 1984 the firm acted for Aurora Realty Corporation in connection with an Internal Revenue Service inquiry relating to whether an investment offered by it was an "abusive" tax shelter under the Internal Revenue Code. Messrs. Field and Cannella were involved on behalf of this firm, and dealt with Examination Officer Michael Oleksiak (212-264-3221). They were advised that the Internal Revenue Service in Washington determined not to proceed.

(2) In 1987, the firm represented Rothschild Reserve International, Inc. with respect to an inquiry or investigation by the New York State Attorney General regarding the entities listed just below. The matter was handled by my partner, John L. Amabile who dealt with Assistant Attorney General Mark A.

Tipper, 120 Broadway, New York, NY 10271 (212-341-2197).

AEC-0800
AEC-0801
UKA-4001
UKA-8001
BAV-8809

(c) The cases responsive to this portion of the question are listed below, with the name or names, addresses and telephone numbers of the opposing counsel. The cases numbered 1 through 10 are, I am advised, all actions commenced by investors which arose in connection with the threatened or actual disallowance of Federal income tax deductions. The remaining cases are individually described. Unless otherwise noted in parentheses, the principal lawyer for this firm was, or is, my partner, John L. Amabile.

1. Hudson Ten Rehab. Corp., Austin Laber and Jerome Kretchmar vs. RRI/Syn-Tech XLVII. Plaintiffs are represented by Arthur J. Ginsburg, Esq. of the law firm of Frankfurt, Garbus, Klein & Selz, P.C., 485 Madison Avenue, New York, NY 10022 ((212) 980-0120).

2. Albert J. Zaloom vs. Barry Trupin, Paragon Financial LTD., Amtax Planning Corp., Rothschild Reserve International, Inc., Cornick, Garber & and Sandler and Stein, Bliablias & McGuire. Plaintiff is represented by Joseph Sternberg, Esq. of Goodkind, Wechsler, Labaton & Rudoff, 122 East 42 Street, New York, NY 10168 ((212) 480-2332) and by Stuart Savett of Kohn, Savett, Klein & Graf, P.C., 2400 One Reading Center, 1101 Marketing Street, Philadelphia, PA 19107 ((215) 238-1700).

3. Harold Robinson vs. Rothschild Reserve International, Inc., Paragon Leasing Corp., DCS Equipment Leasing Corp., F/S Limited Partnership and John Prowant. Plaintiff was represented by Pete C. Elliott, Esq. of Benesch, Friedlander, Coplan and Aronoff, 1100 Citizens Building, 850 Euclid Avenue, Cleveland, OH 44114-3399 ((216) 363-4657).

4. David Hutchison vs. Rothschild Reserve International, Inc., Kimberly Associates, Barry H. Trupin, D.C. Equipment Leasing Corp., and National Union Fire Insurance Company

of Pittsburgh, PA. Plaintiff is represented by C. Scott Crabtree, Esq. of Inman, Erickson & Flynn, 1660 Lincoln Street, Denver, CO 80264 ((303) 861-5300).

5. Richard D. Spangler, Michael J. Ptasnik, Ronald K. Law and Dennis K. Law vs. RRI XX Management Corporation, Rothschild Reserve International Inc., General Data Associates, Barry H. Trupin, D.C. Equipment Leasing Corp. and National Union Fire Insurance Company of Pittsburgh, PA. Plaintiffs are represented by C. Scott Crabtree, Esq. of Inman, Erickson & Flynn, 1660 Lincoln Street, Denver, CO 80264 ((303) 861-5300).

6. Bernard Kaufman and Sylvia Kaufman and Van Stevens and Geraldine Stevens vs. AEC-0800, Rothschild Reserve International, Inc., RRI XX Management Corporation, Amtax Planning Corporation, Barry Trupin, Renee Kuchinski, Walter Levine, and Michael Stoler. Plaintiffs were represented by Howard Fifer of Sonkin & Fifer, 19 West 34 Street, Suite 1022, New York, NY 10001 ((212) 594-9190).

7. Daniel S. Pena vs. D.C. Equipment Leasing Corporation and Paragon Leasing Corporation. Plaintiff was represented by Finley, Kumble, Wagner, Heine, Underberg, Manley & Casey, 425 Park Avenue, New York, NY 10022 ((212) 371-5900). (Gary L. Maddock, formerly with this firm.)

8. Daniel S. Pena vs. Rothschild Reserve International, Inc., D.C. Equipment Leasing Corporation, Paragon Leasing Corporation, State Bank of India, First Los Angeles Bank. Plaintiff was represented by Timothy J. Harris then of Finley, Kumble, Wagner, Heine, Underberg & Manley, 9100 Wilshire Boulevard, Beverly Hills, CA 90212 ((213) 550-6100). (Gary L. Maddock, formerly with this firm.)

9. Marshall Harrell vs. Rothschild Reserve International, Inc., D.C.S. Equipment Leasing Corporation, Paragon Leasing Corporation, Paragon Financial, Ltd., Paragon Equities Corporation, Syn-Tech Leasing Corporation, Barry H. Trupin, Ben W. Trupin, Renee Trupin and Tara Trupin. Plaintiff is represented by Craig C. Cantey, Jr., Courthouse Square, Brenham, Texas 77833-3645 ((409) 836-0743) and the Law Office of R. Mark Dietz, 1111 North 1H-35, Round Rock, TX ((512- 244-9314).

10. Milton R. Forrest vs. Barry H. Trupin, Rothschild Realty Partners 130.14, Rothschild Realty Partners 130.13, Rothschild Realty Partners 118, Rothschild Center Associates, Rothschild Registry International Inc., Tru Management Corp., Prudential American Realty Corp., Bennett W. Trupin and Arthur Berlin. Plaintiff is represented by Herrick, Feinstein, 2 Park Avenue, New York, NY 10017 ((212) 684-1400).

11. American Computer Sales and Leasing, Inc. vs. RRI XX Management Corp. and "John Doe" Corporation. This was an action for an alleged breach of a remarketing agreement. Plaintiff was represented by Arutt, Nachamie, Benjamin, Lipkin & Karschner, 292 Madison Avenue, New York, NY 10017 ((212) 532-3380). (Barrie L. Goldstein, formerly with this firm.)

12. Harry A. Wasserman vs. Rothschild Reserve International, Inc., Thomas P. Huntington & Associates, Inc., Francis W. Morley & Associates, Inc. and James Chisolm, Thomas P. Huntington and Francis W. Morley. This was an action for commissions allegedly due to plaintiff. Plaintiff was represented by Farrauto, Berman & Fontana, 1250 Central Park Avenue, Yonkers, NY ((914) 423-8893). (Lawrence Gibbs, formerly with this firm.)

13. H. William Monroe Insurance vs. Rothschild-Royce International. This was an action for monies allegedly had and received. Plaintiff was represented by Ross, Sechoff, Taroff & Jason, P.C., 261 Broadway, New York, NY 10007 ((212) 349-1668). (Lawrence Gibbs, formerly with this firm.)

14. Karen Hollander vs. Barry H. Trupin. This was an action for an alleged breach of contract. Plaintiff was represented by Weinstein, Kaplan and Cohen, Esqs., 60 Cutter Mill Road, Suite 308, Great Neck, NY 11021 ((516) 466-2525).

15. Queensboro Leasing Inc. vs. Rothschild-Royce International, Inc. and Barry H. Trupin. This was an action for an alleged breach of an automobile lease agreement. Plaintiff was represented by Leinhardt & Freed, 125-10 Queens Boulevard, Kew Gardens, NY 11377 ((212) 261-5343.

16. Comdisco Inc. vs. Rothschild Reserve International Inc. This was an action for an alleged breach of a guarantee. Plaintiff was represented by Melvin Cohen of Rood, Schwartz, Cohen & Ruderman, 5 Corporate Park Drive, White Plains, NY 10804 ((914) 694-2096).

17. Amtax Planning Corp. vs. RRI Syn-Tech XXXIII, RRI Syn Tech XXXIV, RRI Syn-Tech XL, RRI Syn-Tech XLI, RRI Syn-Tech, XLII, RRI Syn-Tech XLIII, RRI Syn-Tech XLIV, RRI Syn-Tech XLV, AEC-0800, BAV-8809, BC-8881, Bell-8123, CEC-7807, MB-2281, MC-8165, PS-8801, RC-6866, SWE-8181, TOV-3813, UKA-8001, UKW-7802, VAG-5815, WB-2807 and Paragon Leasing Corporation. This was an action for the alleged failure to pay certain promissory notes. Plaintiff was represented by Peckar & Abramson, 501 Fifth Avenue, New York, NY 10017 ((212) 695-4611).

18. Fox & Co. vs. Rothschild Reserve International Inc. This is an action for allegedly due accounting fees. Plaintiff is represented by Hayl, Hayl & Landau, 600 Northern Boulevard, Great Neck, NY 11021 ((516) 466-5800). (Guy R. Fairstein, of this firm.)

2. As to the matters identified in response to the preceding question, please indicate the matters (if any) in which you were personally involved in representing Mr. Trupin and/or entities controlled by him, and describe briefly your role in such representation.

RESPONSE:

I was not personally involved in the representation as to the matters identified in response to the preceding question, except as stated in the initial response to this question that I sent to Mr. Metcalitz on May 31, 1988.

3. Have you ever invested in any entities established and/or controlled by Mr. Trupin, including but not limited to those listed in the enclosure to this letter? Have you ever had any business relationship with Mr. Trupin other than an attorney-client relationship? If so, please provide details.

RESPONSE:

While this question was answered in the initial response, I reiterate that I have not invested in any entities established and/or controlled by Mr. Trupin, including, but not limited to, those listed in the enclosure to your letter, and I have not had any business relationship with Mr. Trupin (or any such entity) other than an attorney-client relationship.

Senator **Leahy**. Judge Roberto, would you raise your right hand? Do you solemnly swear that the testimony you shall give in this matter shall be the truth, the whole truth and nothing but the truth, so help you God?

Judge **Roberto**. I do.

Senator **Leahy**. Judge, did you have any opening statement you wished to make?

TESTIMONY OF ROBERT ROBERTO, JR., MANHASSET, NY, TO BE U.S. DISTRICT JUDGE FOR THE EASTERN DISTRICT OF NEW YORK

Judge **Roberto**. No, except that it is good to see you again and it is good to be here in Washington visiting with my daughter and being in this room for this occasion.

Senator **Leahy**. Thank you.

Now, Judge Roberto, I was looking back through the background material and some of the questions I would like to go over with you because you are in the best position to be able to respond on these.

In July of last year, a Long Island newspaper reported on your ruling on a petition brought on behalf of a man named Philip Basile. Do you know——

Judge **Roberto**. I know the case, yes.

Senator **Leahy**. The petition was brought in July 1984. Apparently, Mr. Basile had just been convicted in Federal court of conspiring with organized crime figures to provide a no-show job to a mob underling.

In the petition, Basile asked you for something called, quote, "a certificate of relief from civil disabilities." That was an order that enabled him to retain his liquor license that he had held for several—I believe four—Long Island night clubs until he could be further investigated by the New York State Liquor Authority.

Now, according to the article, you granted the order for Mr. Basile, and then in the article, in the newspaper article, you were quoted as saying that the order was one of hundreds of orders signed routinely in the division of the Supreme Court in which you were sitting at the time; in other words, basically a routine order.

Now, what raised a question for me—and I have not practiced law in New York, but was it unusual for you as a State court judge to be granting a certificate of relief from a Federal court conviction?

Judge **Roberto**. It is the only procedure available for a certificate of relief from disability. There is no Federal procedure for issuing such a certificate. It is covered under the correction law of the State of New York, and there had been at least three or four prior cases where Federal convictions were brought before a State supreme court for the certificate of relief of disability. There was precedent for it.

Senator **Leahy**. Well, there was precedent. As near as I could find, precedent was one case 10 years before in 1974.

Judge **Roberto**. Well, I know of two cases, one that was actually out of our court and another one that was in Queens County. I know of the two cases, and they were both presented to me at the time the application was made.

Senator **Leahy**. Well, the Federal defendants, though, could file a petition with the New York State Parole Board if they wanted to get a certificate of relief. The parole board would conduct an investigation to determine whether they should get that certificate of relief, and then the parole board would get a copy of the report. They would interview him, check his or her tax records, and so on.

Did you do any of that kind of investigation before you ruled on Mr. Basile's request for a certificate of relief?

Judge **Roberto**. No, I didn't, Senator. The part that I was sitting in was an ex parte part. Routinely, 100 or 200 matters come before that part each day. It is a part that a judge sits in once every 2 years for one term, which is 4 weeks.

And no notice was required under the statute. I took it in. It is checked by the clerk of the court for procedural deficiencies. If found procedurally correct, it is sent in for signature.

Senator **Leahy**. Well, this was from a Federal court. Suppose it had been a State conviction. Wouldn't the judge normally obtain a record and recommendation from the offender's probation officer before he were to issue any kind of an order?

Judge **Roberto**. Depending upon the case. I had never, ever requested a probation report before I issued a certificate of relief of disability. I had never done it in the past and I haven't done it since.

Senator **Leahy**. How many certificates of disability had you issued before?

Judge **Roberto**. Oh, a substantial number in the lower court.

Senator **Leahy**. And never once got a report from the probation officer?

Judge **Roberto**. Well, usually the application is made contemporaneously with the sentencing or immediately thereafter, so the facts are before the court and it wouldn't be necessary to have any additional information at that time.

Senator **Leahy**. But this was out of a Federal court, so those facts were not before you.

Judge **Roberto**. You are correct.

Senator **Leahy**. Well, then, why did you not ask for a report?

Judge **Roberto**. I didn't think it was necessary under the facts of the case and, quite frankly, I didn't remember the case until the article appeared in the newspaper. I knew nothing about the case until that article came in and I didn't know the defendant. I didn't even remember the application until it was raised in the newspaper.

Senator **Leahy**. Well, I am somewhat confused. If you did not know the defendant and did not know the facts of the case, were you just making a leap of faith in issuing the certificate?

Judge **Roberto**. No. A petition was submitted to the court. It was a sworn affidavit from the defendant indicating the nature of his crime, his prior record, the fact that he had held a liquor license for approximately 14 or 15 years prior to the incident, had never been in trouble before.

And what I was, in fact, doing was giving him the right to make an application before the State liquor authority. I did not grant him a liquor license. I didn't indicate in any way whether he should be granted one.

All I did was give him the right to make an application to the State liquor authority which they could either grant or deny.

Senator LEAHY. Well, you did not talk with the Federal prosecutor in the case?

Judge ROBERTO. No. There is no notice required under the statute and I did not do that.

Senator LEAHY. I understand. Nor with the judge who had sentenced him?

Judge ROBERTO. No, I did not.

Senator LEAHY. The reason I ask is I understand that the judge said he had considered the possibility of Basile's losing his liquor license when he sentenced him and had taken that into account in imposing punishment, and that he would have strongly objected to the certificate.

Judge ROBERTO. Well, if that is true, I didn't have the privilege of speaking to the judge, but it was my indication afterwards, after I did my own investigation after the case came out, that he had a very favorable probation report and that the probation department had indicated that they did not want him to lose his liquor license because it would have made the sentence that was imposed ineffective, that he was to do community service, and part of the community service was to use his restaurant for feeding people and if he had lost his license, he couldn't do that.

Senator LEAHY. But you did not know anything of his record before you granted him the certificate?

Judge ROBERTO. Oh, I knew of his prior criminal record. I knew he did not have one. Oh, I knew that; that was part of the application.

Senator LEAHY. Did you know that evidence had been presented at the trial that Basile had for years paid a portion of his clubs' profits to Paul Vario, a captain in the Luchese crime family, in order to keep organized unions out of his clubs?

Judge ROBERTO. No, sir, I did not know that.

Senator LEAHY. Did you know that evidence has been presented that Basile once paid a mob underling $5,000 to burn down one of his clubs?

Judge ROBERTO. No, sir, I did not know that.

Senator LEAHY. Did you know that his clubs had been investigated numerous times by the New York State Liquor Authority for skimming and undisclosed ownership by organized crime?

Judge ROBERTO. No, I did not.

Senator LEAHY. Did you know that his clubs had been the scene of dozens of drug busts over the preceding few years?

Judge ROBERTO. No, sir, I did not. They all seem valid reasons for not granting a liquor license if they were true.

Senator LEAHY. Some might even think it would be a valid reason not to give him the certificate, would they not?

Judge ROBERTO. Well, as I said, the only thing a certificate could do is to give him the right to make an application and if all that information—I'm sure they would have a hearing before the State liquor authority and that would all come out.

Senator LEAHY. In his application, he said he had had absolutely no difficulties with the law, but he had, in fact, been indicted for grand larceny by a Nassau County grand jury in 1972, had he not?

Judge **Roberto**. I did not know that.

Senator **Leahy**. Well, you were heading the grand jury bureau of the DA's office at that time.

Judge **Roberto**. We had 5,000 indictments a year, Senator.

Senator **Leahy**. Of course, if you had asked—well, we will take a 5-minute recess at this point.

[Recess.]

[Articles follow:]

[From Newsday, July 4, 1987]

BLACKS; JUDGE; APPOINTMENTS; DISCRIMINATION; RETIREMENT

U.S. District Court Judge Henry Bramwell, who recently asked that a black be named to succeed him when he retires this fall, has criticized New York's two U.S. senators for showing a "callous disregard" for blacks by failing to recommend them for judicial appointments.

"It would appear that you have failed, refused and neglected to consider blacks in your selection of U.S. District judges in New York City," he said in identical letters to Sens. Alfonse D'Amato and Daniel Patrick Moynihan. "This cannot be classed as 'benign neglect.' Your actions are indicative of callous disregard of blacks in New York."

Bramwell, the only black to be appointed to the Eastern District of New York, fired off the angry letter after hearing that a white candidate had been recommended by D'Amato for Bramwell's position.

Bramwell told reporters that he had been notified by the judicial selection committee of the Justice Department that D'Amato had submitted the name of State Supreme Court Justice Robert Roberto, 57, of Nassau County.

"You should start immediately to reach out in New York and arrange for the appointment of a black U.S. District judge," Bramwell told the senators. "Any lesser action on your part is unwarranted."

Bramwell, in announcing last month that he planned to retire on Sept. 30, criticized President Ronald Reagan's judicial appointment record and asked that the president select a black for his post. Bramwell, 67, a former federal prosecutor and Civil Court judge, was appointed to the federal court in Brooklyn by President Gerald Ford in December, 1974.

Bramwell said in yesterday's letter that when D'Amato began his first term in 1981, there were five black federal judges in the city. When he leaves the court, Bramwell said, only one black federal judge will remain in the city [MD] and none in the Eastern District, which comprises Brooklyn, Queens, Staten Island and Nassau and Suffolk.

By tradition, federal judges are nominated by senators of the same party as the president. But in an agreement between the two senators, D'Amato selects three candidates for every one suggested by Moynihan. D'Amato has never recommended a black for appointment.

Asked if he was also criticizing Moynihan, Bramwell said: "his record isn't much better than D'Amato in this regard."

Molly Phee, a spokesman for Moynihan, said that Moynihan has nominated one black—U.S. District Court Judge Mary Johnson Lowe of the Southern District—since being elected in 1976.

Michael Kinsella, D'Amato's administrative assistant, said of Bramwell's criticisms: "The senator appreciates the sentiment of the judge and his suggestions for a qualified person." He confirmed that Roberto is being reviewed by the senator's screening panel. But he said one or two others are also being considered, including a black candidate suggested by Bramwell—Acting Suffolk County Court Judge Marquette Floyd.

Roberto, a Republican, was executive assistant to former Nassau County District Attorney William Cahn. In 1974, Roberto became a District Court judge and in 1978 a State Supreme Court justice.

One of Roberto's rulings as a State Supreme Court justice involved what a federal prosecutor termed a "surprising action" in a case involving a longtime friend of D'Amato, Philip Basile.

Basile had been convicted and sentenced to 5 years' probation in 1984 for conspiring with an organized crime captain to give a no-show job to a convict seeking parole. Instead of working in Basile's club, the convict, Henry Hill, began to plot the $5.8-million Lufthansa robbery at Kennedy Airport in 1978. There was no suggestion at Basile's trial that he had any knowledge of the planned robbery. D'Amato, who was the only character witness called by the defense, testified that Basile was "a man of honor and truth."

Eight months after the conviction, Roberto, who was not the trial judge, signed an order that allowed Basile, who was represented by the senator's brother, Armand D'Amato, to successfuly petition the State Liquor Authority to retain his liquor license.

Jerry Bernstein, of the Federal Organized Crime Strike Force, who prosecuted Basile, said this week that in a "surprising action," Roberto never informed him that Basile was seeking the court document. "The judge only heard one side of the story," he said.

In an interview this week, Roberto said of Basile, "I do not know him." After he was read a newspaper account of his signing of the order, the judge said he was sitting at that time in a part of Supreme Court in which hundreds of applications are signed routinely. He said he depended on the clerks to make sure that all notifications were made.

[From Newsday, Dec. 20, 1983]

WITNESS LINKS BASILE TO MOB, ARSON

(By Carolyn Colwell)

BROOKLYN.—The star government witness in the conspiracy case against Long Island night club operator Philip Basile described Basile yesterday as a "friend" who once hired him to burn down a competitor's club and as a man who frequented the headquarters of an alleged Luchese family capo.

The witness, Henry Hill, is a $1,500-a-month government informer who has admitted participating in the $5.8-million Lufthansa heist at Kennedy Airport. Basile, 48, of Bellmore, is charged with conspiring with Paul Vario Sr. of Island Park to provide Hill with a "dummy" job so Hill could win parole from federal prison. Authorities have described Vario as a leader of the Thomas Luchese organized-crime family.

Dressed in a subdued tweed jacket and furrowing his brow as he talked, Hill looked more like a successful salesman than the "gangster" he has called himself. Hill had not been expected to testify yesterday because of a kidney ailment, but he passed a kidney stone over the weekend and his doctor allowed him to travel to the courthouse.

In an afternoon on the witness stand, Hill, 40, told the story of his life in crime. It started, he said, when he was 13 or 14 and stole car batteries when he worked for the Vario family's taxi business. Paul Vario was his "boss" from the mid-1950s to 1980 and, at this direction, he engaged in crimes ranging from robbery to hijacking and arson to assault, Hill said.

Vario introduced Hill to Basile in the mid or late 1960s and Hill frequented Basile's club called the Action House, Hill said. When Hill ran Tempo Dance City, Vario arranged for a group Basile managed, the Vanilla Fudge, to put on a free concert there, Hill added.

But things weren't always so friendly. In the late 1960s or early 1970s, Hill said he went to Action House "with a bunch of guys and we wrecked the place." The purpose of that visit was to make Basile pay protection money, Hill said. But he said he wasn't sure whether Basile started paying Vario before or after that incident.

In 1974, Hill said that Basile paid him $5,000 to throw sterno cans and toilet paper down the air-conditioning vents at OBI West, a popular Island Park night club run by a competitor on property leased from Basile.

In an interview last night, Basile's attorney, Gerald Shargel, said, "Hill's accusation is an absolute lie."

Robert Matherson, the owner of the Island Park club at the time of the fire, said last night in a telephone interview that he'd suspected arson. The club incurred $100,000 damage when it was gutted by a fire of undetermined origin on March 27, 1974. Matherson, who said he has no personal connection with Basile, added that Basile took over the property after the fire and rebuilt the club and called it Speaks.

During cross examination, Basile's lawyer, Shargel, hammered away at Hill's past involvement with bribing law enforcement officials and prison guards and lies he told on his parole papers.

[From the New York Times, Apr. 23, 1976]

CAHN IS UNDER INQUIRY IN CASE INVOLVING FALSE SEVERANCE PAY

(By Robert E. Tomasson)

William Cahn, the former Nassau County District Attorney who will be retried next month on Federal fraud charges, is under investigation for an alleged conspiracy involving falsified severance payments to 12 former aides.

Denis E. Dillon, Mr. Cahn's successor as Nassau County District Attorney, disclosed yesterday that a special grand jury was hearing testimony on the payments to the former aides, all of whom left office last year after Mr. Dillon defeated Mr. Cahn.

"We are investigating the possibility that these people took more money in overtime than they were entitled to," Mr. Dillon said.

The alleged overpayments total approximately $50,000.

All the payments, many of them made in the last days of Mr. Cahn's tenure, were approved by the former District Attorney.

While Mr. Dillon declined to give details of the investigation, it was learned that a focal point concerned a longstanding policy that county employees who made more than $15,000 a year did not receive cash payments for overtime.

Other cash payments included claimed vacation days not taken and unused sick leave.

All the former aides made more than $15,000 a year, an official source said. With one known exception, all were former assistant district attorneys.

One of those under investigation is Robert Roberto Jr., a former assistant district attorney and No. 2 aide to Mr. Cahn.

Mr. Roberto joined Mr. Cahn's staff on April 6, 1971, at a yearly salary of $28,958. When he left last year he was earning $39,500, according to records in the office of the County Comptroller, M. Hallsted Christ. Upon leaving the District Attorney's office, he received $9,080.46 for what he claimed was 49 days of unused vacation time and 12 sick days due him.

Mr. Roberto, now chief counsel to the Joint Bar Association Grievance Committee, which investigates charges of professional misconduct against lawyers in Nassau and Suffolk Counties, could not be reached for comment.

GRAND JURY PROBING SEVERANCE CAHN OK'D

(By Manny Topol and Bruce Lambert, Jr.)

MINEOLA.—A least 12 top aides of former Nassau District Attorney William Cahn are being investigated by a county grand jury for allegedly falsifying a total of $40,000 in severance pay claims when they left office.

Cahn's successor, District Attorney Denis Dillon, confirmed yesterday that the grand jury had been convened this month and is to hear evidence for the next six months.

One of the aides involved is former Assistant District Attorney Robert Roberto Jr., Dillon confirmed. Roberto is now chief counsel to the Joint Bar Association Grievance Committee of the Tenth Judicial District for Nassau and Suffolk—a committee that was set up to investigate errant lawyers. Dillon also acknowledged that Cahn's former public information officer, Mortimer Davis, was one of the other aides involved.

According to county payroll records, Roberto received, $8,000.46, in what he claimed was unused vacation and sick time, when he resigned from the district attorney's office at the end of 1974. Davis received $6,506.21, which he claimed for the same reasons, when he left office at the same time, according to the records.

Roberto's and Davis' requests for termination were approved and certified for payment by Cahn on Dec. 31, 1971. The signatures were one of Cahn's final acts as district attorney, since that was his last day in office. Cahn also signed the requests for all the other aides under investigation, sources said. However, their names, could not be learned, and Dillon refused to disclose them.

"We are investigating the possibility that these people took more money in overtime than they were entitled to," Dillon said. He refused to elaborate. But it was learned that the grand jury is investigating the possibility that Roberto and Davis and the other-claimed vacation and sick time payments in lieu of overtime. The county generally does not permit cash payments for overtime to employees whose salaries are more than $15,000, although a department head may allow time off in compensation. Also, the county usually does not allow conversion of overtime to claims for vacation or sick leave.

The charges that may result from the investigation would involve larceny, filing false statements and perjury.

Cahn has not appeared before the grand jury, but he is expected to be called once his schedule permits. He is to go on trial next month in federal court in Brooklyn on mail fraud charges in an unrelated case.

Roberto, of 204 County Club Dr., Manhasset, joined Cahn's staff April 6, 1971, at a salary of $28,958, according to the payroll records. When he left office less than four years later, he was executive assistant district attorney, the second highest lieutenant in Cahn's command, and was making $39,500. He has claim for termination pay, he said he had accumulated 49 unused vacation days and 12 unused sick, leave days, a total of 61. However, county regulations limit termination pay to 60 days, which is what Roberto received. Roberto was unavailable for comment last night.

Davis, of 8 Evergreen Ave., New Hyde Park, worked for Cahn for eight years as his public information officer. His salary upon leaving was $28,502. He submitted a claim for 38 unused vacation days and 29 days of unused sick leave time, a total of 67 days. Davis also was granted the maximum 60 days' pay.

It was learned that some of the aides have told investigators that their vacation and sick days were in fact unused and, therefore, should have been paid.

Senator LEAHY. Judge Roberto, in the committee's questionnaire you were asked whether you were ever investigated for a possible violation of either civil or criminal statutes or administrative agency regulations. You answered by referring only to an incident from college days. I would never ask you to go back that far, on the possibility that any one of us might ever be up for a judgeship.

But according to a report that appeared in the New York Times on April 23rd, 1976, you were investigated by a Nassau County grand jury for submitting a false claim for vacation and sick pay when you left the office of District Attorney Cahn in 1974. Apparently, there had been a similar report in Newsday.

Were you aware of these reports?

Judge ROBERTO. I read the reports, certainly, Senator.

Senator LEAHY. Now, you were aware, were you not, that the DA's office had investigated your pay claims?

Judge ROBERTO. I was aware of the fact that they were investigating the severance pay that was paid to all of the assistant district attorneys who left the office at that time. I think there were something like 10 or 12 assistants who all left at the end of 1974.

I'm not sure that they were investigating my claim. It was my understanding that they were investigating the claims in general, and I did cooperate in that investigation and I did testify before the grand jury.

Senator LEAHY. Well, in fact, a few weeks after you left the DA's office you were called back to be questioned about your pay claims by a new assistant DA and investigator in the DA's office, were you not?

Judge ROBERTO. I did. I met with a gentleman by the name of Mr. Leff, and I don't know if it was a few weeks later or maybe a month or two or even 4 or 5 months after. I don't remember the exact date, but it was after I had left the office, yes.

Senator LEAHY. Now, again, the question in our questionnaire was: "Were you ever investigated for a possible violation of either a civil or criminal statute or administrative agency regulation?" So this is something you should have included in that questionnaire, should you not have?

Judge **Roberto**. Well, if I was investigated, the answer, of course, would be yes. It was my understanding that after meeting with Mr. Leff we discussed the matter and he asked me if I would testify before the grand jury and I said that I would be happy to do so, and I did testify before the grand jury.

Now, I felt if I was a target of that investigation that by my testifying before the grand jury and getting immunity by that testimony, I couldn't possibly be a target. I didn't consider myself a target.

Senator **Leahy**. But did he not specifically ask you about your own pay?

Judge **Roberto**. Yes, he did, he did.

Senator **Leahy**. But you do not see that as being a target of an investigation?

Judge **Roberto**. I did when I first went in and met with him, but when he asked me if I would testify before the grand jury and testify as to the procedures, and I agreed to do that, I felt that I couldn't possibly be a target if I was being given immunity.

You know, being a prosecutor, you don't give immunity to the targets of your investigation, and there was never any question about my not testifying before the grand jury or immunity.

Senator **Leahy**. You were asked, also, have any of your business or professional associates ever been the subject of a criminal investigation. How do you answer that?

Judge **Roberto**. Business or——

Senator **Leahy**. Or professional associates.

Judge **Roberto**. Well, the only one, of course, that I could think of would be William Cahn, who was investigated, and I did not think of that. He was my boss, he was my employer. I didn't think of him as being a business associate in that sense.

Senator **Leahy**. I want the record very clear that you were never prosecuted for any involvement in the matters Mr. Cahn was prosecuted for.

Judge **Roberto**. I think the record should be clear to that effect. That is true, yes.

Senator **Leahy**. I know, and I am noting that very much.

Now, you were his assistant. You knew about the trip that he was taking during that time to meet with—I think it was noted he was meeting with somebody named Sam Houston.

Judge **Roberto**. I knew nothing about that until it came out in the newspaper, Senator.

Senator **Leahy**. Did you know he was billing both the government and the National District Attorneys Association?

Judge **Roberto**. Not until I read about it in the newspaper.

Senator **Leahy**. You knew he was traveling?

Judge **Roberto**. Excuse me?

Senator **Leahy**. You knew he was traveling a lot?

Judge **Roberto**. That is why I was working so hard in the office, Senator.

Senator **Leahy**. I recall.

Now, in the questionnaire the committee asked you—and these are questions, I should note, that we ask everybody—how you would resolve potential conflicts of interest in cases that would come before you as a U.S. district judge.

You said you would take any steps necessary to remove any conflict. You would abide by the applicable rules of the ABA and the Judicial Conference. Now, you have been a State court judge. Have you followed those same rules?

Judge Roberto. Yes, of course.

Senator Leahy. The reason I ask that is a conflict of interest allegation came up that dealt with your activities just prior to your becoming a State court judge. It happened a number of years ago, but you may face conflict of interest questions as a judge, so I just wanted to go into how you handled this.

[Article follows:]

Ex-Client Testifies Against Lawyer

(By Rita Ciolli)

Mineola.—William Conlon has told the story many times, but yesterday, after more than two years of waiting, he told it in court.

Conlon, 54, was the first witness at the grand larceny trial of J. Lennart Rapp, who is accused of stealing $213,000 from five clients and the partners in his former Mineola law firm, Maloney, Murphy and Rapp. Conlon says he almost lost his Huntington home in 1977 in a foreclosure action because Rapp pocketed $16,100 that was supposed to be used to satisfy a loan.

The trial began last week, nearly two years after Conlon's complaint first came to the Nassau district attorney and a lawyer's disciplinary committee.

Conlon and his wife, Jeanne, have been persistent in pushing their claim that Rapp should lose his license to practice law. But nothing has happened, the Conlons say, because Rapp was given special treatment. The delays in disciplinary action brought the unusual intervention of Presiding Justice Milton Mollen of the Appellate Division and an inquiry by the State Commission on Judicial Conduct, according to sources familiar with the case.

In response to the Conlons' charge of special treatment, a lawyer familiar with the disciplinary committee's function said the delay is due in part to an overburdened staff and complications arising when criminal charges are involved.

Conlon, the owner of a furniture repair firm, testified that in the spring of 1977 he gave Rapp two checks, for $7,600 and $8,500, to pay off a loan. The Conlon home, at 2 Hawxhurst La., had been pledged as collateral for the loan. "I was on a vacation in Ireland when my son called to say our house would be sold for nonpayment of a loan," Conlon said.

Last week, Rapp, 49, offered to plead guilty to one count of grand larceny to satisfy the eight-count indictment. Rapp admitted using the Conlon money for his own purposes but maintained that he had planned to pay it back. Judge Raymond Harrington refused to accept the plea and ordered the case to trial, ruling that if Rapp had no intent to steal he may not have committed a crime.

Rapp maintains that he never intended to hurt his clients.

In cross-examination by defense attorney William Heil, Conlon said that once or twice Rapp said he would pay him back, "Yes, he said that, but no money ever came," Conlon said.

After Conlon left the courtroom, his eyes filled with tears, as he told his wife that the ordeal was over. But Mrs. Conlon disagreed. "It's not over until he is disbarred," she said. "We made our complaint in December, 1977, but still nothing has happened," she said.

The handling of the case also prompted Nassau District Attorney Denis Dillon to notify the State Commission on Judicial Conduct to examine the conduct of the former attorney for the disciplinary committee, Robert Roberto, Jr., who now is a District Court judge.

In an interview yesterday, Roberto said he had been a close friend of Rapp's years ago, and that as soon as the Conlon complaint came into his office, he disassociated himself from it.

"I had already resigned and was emptying my desk," Roberto said in an interview. "I had nothing to do with it at all." Roberto had no comment on the inquiry by the state body, nor would the commission's head, Gerald Stern. State law prohibits making public any information on whether an inquiry has been made or its results.

Senator LEAHY. There was an article, again, in Newsday in September of 1979 that you were once the subject of a disciplinary complaint for actions you took as chief counsel to the Attorney Grievance Committee in Long Island.

It said that as chief counsel of the grievance committee you had failed to act on a disciplinary complaint filed against a lawyer named J. Lennart Rapp, who was an old friend of yours.

And then your response, however, was that you stated that the complaint against Rapp was filed only a few days before you left your post at the grievance committee, that you disqualified yourself from working on the complaint as soon as it came into the office, and you said that you had nothing to do with it at all, is that correct?

Judge ROBERTO. That is correct, yes. I think it was about a 7- or 8-day period between the day the complaint came in and the day I left and, of course, I knew I was leaving substantially before that.

I notified the chairman of the grievance committee immediately of my association with Mr. Rapp and, of course, he knew I was leaving the office.

Senator LEAHY. And, in fact, I want to note for the record—and I hope you understand, Judge, that a number of questions have come up and whoever was here conducting these hearings would be asking you basically the same questions——

Judge ROBERTO. Of course.

Senator LEAHY [continuing]. So that at the time we discuss it before the full committee, somebody does not say, well, did you ask about it?

Judge ROBERTO. Well, that is why I am here, Senator.

Senator LEAHY. I understand.

Judge ROBERTO. I'm happy to answer the questions.

Senator LEAHY. In fact, I should note for the record that that complaint was ultimately dismissed by the Commission on Judicial Conduct, is that not correct?

Judge ROBERTO. That is correct, yes.

Senator LEAHY. The complaint against Rapp was filed on December 23, 1977. In fact, you recused yourself from the matter at that time, did you not?

Judge ROBERTO. I did.

Senator LEAHY. The complaint was filed on December 23 and you left the committee to become a judge on January 9, just a couple of weeks later, anyway.

Judge ROBERTO. That is correct, yes.

Senator LEAHY. Had there not been some serious complaints about Mr. Rapp prior to December 23, 1977?

Judge ROBERTO. Not to my committee and not to my knowledge.

Senator LEAHY. What about a couple of months earlier? Did an attorney named John Fisher contact you and say that Mr. Rapp was stealing client funds?

Judge ROBERTO. He told me that Mr. Rapp was in trouble and I told him if he was in trouble, it was his obligation to file a complaint with the proper authorities, and I assume that is why the complaint was eventually filed.

Senator LEAHY. You did not recuse yourself from any discussions on the Rapp matter at that point?

Judge **Roberto**. No, I did not. I didn't know the nature of his trouble.

Senator **Leahy**. Now, before Mr. Fisher contacted you, had you been called by Mr. Fisher's clients, William and Jean Conlon, to say that Mr. Rapp had stolen their money and put their house in jeopardy of foreclosure?

Judge **Roberto**. I had received a call from—I don't know the person's name, but I did receive a call and I was very annoyed that I received the calls because I was getting called at home, and I told them that I was not involved with Mr. Rapp, I did not represent Mr. Rapp, and that they should speak to their own lawyer. I was very annoyed that they were calling me at home.

Senator **Leahy**. You saw it, then, as them looking for you in a capacity of a possible representative of Mr. Rapp, but not in the way of saying that you should be bringing charges?

Judge **Roberto**. No, no. They were calling me on a personal basis. They never called me as chief counsel to the grievance committee, no. They were calling me on a personal basis.

Senator **Leahy**. Did you tell the Conlons that you would speak to Mr. Rapp or try to get him to give the money back?

Judge **Roberto**. I don't think so. I don't remember that, Senator.

Senator **Leahy**. Well, let us go back even before the Conlons. Had you been told in 1976 by Dennis Murphy, Mr. Rapp's former law partner, that Mr. Rapp had stolen other clients' funds and that his partners had had to replace the missing funds themselves?

Judge **Roberto**. No. I found that out afterwards.

Senator **Leahy**. Do you recall Mr. Murphy talking with you?

Judge **Roberto**. Yes, but I think it was after the fact and not before.

Senator **Leahy**. You mean after——

Judge **Roberto**. After I had become a judge and after I had left the office and after the investigation was in full force and effect of Mr. Rapp.

Senator **Leahy**. I see.

Judge **Roberto**. Mr. Murphy was Mr. Rapp's law partner.

Senator **Leahy**. And your understanding is that Mr. Murphy talked to you after the complaints had been filed against Mr. Rapp and you had become a judge?

Judge **Roberto**. Substantially after, if I remember it correctly, because it seems to me it would have been Mr. Murphy's responsibility, if that had happened, to file a complaint on his own.

Senator **Leahy**. Did you feel any necessity to have anybody on the grievance committee look into the Conlons' complaint?

Judge **Roberto**. Which complaint? I disqualified myself from the—in fact, it was sent to a different judicial district.

Senator **Leahy**. No, no. At the time when they called you at home, did you feel that there was any necessity to have somebody follow up on that?

Judge **Roberto**. I told them that they should speak to their own lawyer. In fact, I did—I think that is how I got Mr. Fisher's name. I asked them for the name of their lawyer because I didn't want to speak to them, and I called Mr. Fisher, or he called me.

I don't know who called who, but it was at that time I said if anything has been done wrong, you should file a complaint, because he was the one with knowledge.

Senator **LEAHY**. So you did call him, however?

Judge **ROBERTO**. I don't know if he called me or I called him, but I did not want to speak to the people on the phone and I either asked them for the name of their lawyer——

Senator **LEAHY**. If this was an ethical complaint against a lawyer and you were on the grievance committee, why would you not speak with them?

Judge **ROBERTO**. Because they weren't calling me in my office. They were calling me at home wanting me to get Mr. Rapp to pay them money and I had no reason why.

Senator **LEAHY**. And when you spoke to Mr. Fisher, did either of you discuss anything about a grievance complaint at that point?

Judge **ROBERTO**. I think I told him that if he had knowledge of any wrongdoing, it was his obligation under the Code of Judicial Responsibility to file a complaint.

Senator **LEAHY**. And what did he say?

Judge **ROBERTO**. I assume that is why the complaint was filed. I don't know.

Senator **LEAHY**. Did you feel that absent any action by Mr. Fisher that you had any obligations?

Judge **ROBERTO**. I had no personal knowledge of anything.

Senator **LEAHY**. Other than what the Conlons told you?

Judge **ROBERTO**. Other than what—and they didn't tell me anything except that Mr. Rapp owed them money. I didn't know in what capacity he represented them, and certainly they could have filed a complaint on their own.

Senator **LEAHY**. You said that you told Mr. Fisher that if he felt that way, he should go ahead and file a complaint, or words to that effect?

Judge **ROBERTO**. Absolutely, yes.

Senator **LEAHY**. And do you know how much longer after that before he did?

Judge **ROBERTO**. I have no idea. I don't even know if he is the one who filed the complaint or he directed his client to file a complaint.

Senator **LEAHY**. But you did not feel that having heard that much from him and them that there was any obligation on your part to say to one of the attorneys in the grievance committee, will you look into this matter?

Judge **ROBERTO**. The rule of the committee was any complaint had to be filed in writing with the committee. We would not take oral complaints on the telephone. If anybody called us with a complaint, the rule was that they were to put it in writing and send it to us and we would conduct an investigation.

Senator **LEAHY**. But they also had rules where they could initiate—I mean, if a member of the grievance committee was aware of something, they could initiate inquiries absent a formal complaint, could they not?

Judge **ROBERTO**. We would do that if we read an article in the newspaper. If somebody was indicted or there were some allegations, we would immediately on our own initiative start an investigation, yes.

Senator **Leahy**. Thank you.

Now, you worked full time as a law clerk to Judge Albert Oppido. Did I pronounce that correctly?

Judge **Roberto**. Oppido.

Senator **Leahy**. Oppido, from 1962 to 1971. You also during that time conducted a private practice in law and litigated matters from an office in Hicksville. Did that ever pose any conflicts of interest with your work for the court?

Judge **Roberto**. No, it didn't. We were allowed to handle non-litigated matters. We had to do it on our own time either during lunch or after 5 o'clock, but it certainly was done on my own time and it was a very, very limited basis.

And then there came a time the rules changed that before you were allowed to handle any specific matter, you had to get permission from the presiding judge of the appellate division second department. So if you wanted to handle a matter, you had to write to him, tell him what the matter was, and he either gave you permission or denied permission.

Senator **Leahy**. And when did that rule go into effect?

Judge **Roberto**. I don't know, but I think it was probably in the mid-1960s, 1970s.

Senator **Leahy**. Did you have occasion to ask for that permission?

Judge **Roberto**. Yes, I did.

Senator **Leahy**. How many times?

Judge **Roberto**. I have no idea, but maybe a dozen times. I have no recollection as to the number of times.

Senator **Leahy**. Every time you had a matter in your private practice, you got such permission?

Judge **Roberto**. After the rule went into effect, yes.

Senator **Leahy**. You were asked if you currently belong or have belonged to any organization that discriminates in its membership policies. You responded by noting your membership in Elks and Kiwanis lodges that do not, or at least did not admit women.

Now, I understand that Kiwanis has recently voted to admit women. What is the current policy of the Elks lodge to which you belong?

Judge **Roberto**. Well, my present information on the Elks is that they still do not admit women. It is an issue that came up just recently before the executive board of the Elks in which they again denied the admission of women. I understand it is going to come up on the floor at the convention this summer and the issue will be again presented to all of the Elks lodges at their annual convention.

Senator **Leahy**. And suppose they say no, no women. How would you feel about your membership then?

Judge **Roberto**. Well, I am very concerned now. My own lodge that I am a member of, or I was a member of, has been in favor of the admission of women, has voted consistently to admit women.

And after my last discussion with them, I told them that I wanted my name stricken from the rolls and it was stricken as of April 1st and I am no longer a member of the Elks because of that reason.

Senator **Leahy**. Thank you.

Now, I have been told by those who know you and have followed you that you handle juvenile cases very sympathetically, a matter that I noted with some interest during the days when I was a prosecutor. That was an area of great concern and interest to me in juvenile cases.

I found that we have judges who do it one of two different ways. They either treat them as an annoyance and almost as though they wished they did not have to be there. I have always felt how much that hurts the juveniles who come before them.

And then I find other judges that handle them very carefully and sympathetically and probably have more of an effect on the juvenile than just about anything else that will happen at that point in their life. So I compliment you on the fact that I hear about that.

What is the juvenile jurisdiction of your court?

Judge **Roberto**. We have no juvenile jurisdiction, Senator. If somebody is a juvenile delinquent, it goes to the family court. We do have youthful offenders between the ages of 16 and 19, which I handled many of.

And if you look at my record, you will see that I have spent a great deal of my time with the young people of our community. I was the first president of the Manhasset Youth Council. I was chairman of the Nassau County Task Force on Vandalism. I'm presently on an advisory committee for abused children.

And I spend a lot of time with the young people of our community. They are very important to the community, they are very important to me. I am very fortunate because of the good children that I have and their accomplishments, and I just wish everybody had the same experience that I have had.

Senator **Leahy**. Well, I compliment you for taking the time. I am always hopeful that judges would do that. I think judges should note it with pride when they do because in some ways it is the most difficult, it can also be the most time consuming, and it could be the one thing that rarely anybody sees in a judge just because of the nature of the proceedings. So I compliment you for that.

Judge **Roberto**. Well, it is my feeling, Senator, that no matter what the case is, when those two people or whoever the litigants are before you—to them, it is the most important thing on their mind at that time, and whether it is a small claims case or a complicated case, the people are entitled to your undivided attention and a fair resolution of their dispute.

Senator **Leahy**. I agree.

I don't know if Senator Thurmond will have some questions, and some of the others may. We will keep the record open if there are any. But, Judge, it is good to see you again; it is good to see how well your family has turned out. Thank you for coming.

Judge **Roberto**. Thank you for having me, Senator.

Senator **Leahy**. Thank you.

[Responses to questions follow:]

U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

May 3, 1988

Steve Metalitz
Committee on the Judiciary
United States Senate
212 Dirksen
Washington, D.C. 20510

Dear Steve:

Enclosed please find the answers of Robert Roberto, Jr. to questions submitted after his hearing.

Sincerely,

Laura Nelson

Enclosure

QUESTIONS FOR JUDGE ROBERT ROBERTO, OF NEW YORK, TO BE UNITED STATES DISTRICT JUDGE FOR THE EASTERN DISTRICT OF NEW YORK

1. Judge Roberto, I consider judicial temperament to be a prerequisite for a Federal Judge. Would you please give me your thoughts on this subject:

I agree that judicial temperament is a prerequisite to being a judge. The greatest legal mind would be ineffective as a judge if judicial temperament was not present. Parties to a lawsuit must not only receive a fair trial, but they must believe that they did. That impression is conveyed by the temperament of the judge.

2. Judge Roberto, where in your view does a conscientious judge draw the line between judicial decision-making and legislative decision-making, and what are the criteria that you would consider in resolving whether or not a decision was the type that should be made by a judge as opposed to an elected legislative body?

It is imperative that the judiciary limit itself to hearing cases in which there are real parties in interest, a particular grievance which is ripe for resolution.

The majority through their elected represenatives have a right to govern, but the majority does not have the right or power to infringe on the individual's rights of liberty and equality provided in the constitution. The court has an obligation to protect those individual rights. To fulfill that obligation the court must rely on statutory and precedential authority and should not be guided solely by a judge's personal will or private view.

The judiciary interprets the law, the power to make and execute those laws is vested in the elective branches of government. A judiciary that attempts to impose its view upon the majority without regard for its constitutional limitations, infringes on the rights and duties of the elective branches of government. The exercise of such power, within the constitutional limitations, should be used sparingly and only to protect individual rights which are provided for in the constitution.

ROBERT ROBERTO, JR.
JUSTICE

SUPREME COURT OF THE STATE OF NEW YORK
JUSTICES' CHAMBERS
MINEOLA, N.Y. 11501

April 28, 1988

Senator Leahy
Senate Judiciary Committee
224 Dirksen Building
Washington, D.C. 20510

Dear Senator Leahy:

Enclosed please find a copy of the Certificate of Relief from Disabilities which I signed together with the supporting affidavit.

I did not know if you had these documents and I wanted to be certain that you had all the information available.

Sincerely,

Robert Roberto, Jr.

RR:pc
enclosure

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU : SPECIAL TERM, PART 2

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Matter of PHILIP BASILE for

a Certificate of Relief from

Disabilities.

- - - - - - - - - - - - - - - - - - x

Before:
HON. ROBERT ROBERTO, JR.,
Justice.

Mineola, New York
July 20, 1984

Appearances:

ARMAND D'AMATO, Esq.
Attorney for Petitioner

Martin Kern
Official Court Reporter

THE CLERK: In the matter of Philip Basile.

MR. D'AMATO: Your Honor, this is an application for relief, a certificate of relief from disabilities and more specifically we are asking for relief from the ABC Law of the State of New York, Section 126, which prohibits a lincensee from holding a liquor license.

The defendant has been convicted in Federal Court in Eastern District of two federal felonies, a substantive charge of defrauding an agency of the federal government. The actual act took place more than five years ago.

The defendant has been a licensee of holding a liquor license for more than twenty years, and has never been convicted of any crime except for the federal charge that he was convicted of.

The federal government does not have a certificate of relief from disabilities. Under case law of the State of New York we must make application before the Supreme Court of New York State, as if it was a state felony. The judge that did the conviction was no longer sitting as a judge.

THE COURT: Is that under statute or case law?

MR. D'AMATO: Case law.

THE COURT: Do you have the case?

MR. D'AMATO: As a matter of fact the case is in the application.

THE COURT: Okay.

MR. D'AMATO: The case is Michael DaGrossa
72 Misc 2d 90[illegible]
v. Goodman, and back in 1974 my partner, Mr. Jeff Forchelli, brought a matter before Justice Harnett and based on that case on October 21, 1974 a certificate of relief from disabilities ex parte was granted to a Salvatore Aiello, who also was convicted of a federal crime, transporting goods across state lines.

THE COURT: Is this his only conviction?

MR. D'AMATO: That's correct, your Honor. He has never been convicted of any other crime.

THE COURT: There is no federal procedure for a certificate of relief?

MR.D'AMATO: No.

THE COURT: Your application is granted. I have signed the certificate of relief from disabilities.

MR. D'AMATO: Thank you, your Honor.

* * * *

Certified to be a true and accurate transcript.

CERTIFICATE OF RELIEF FROM DISABILITIES

USDC EASTERN DIST. NY
CR-83-289-02

This certificate is issued to the holder to grant relief from all or certain enumerated disabilities, forfeitures, or bars to his employment automatically imposed by law by reason of his conviction of the crime or of the offense specified herein.
This certificate shall NOT be deemed nor construed to be a pardon.
SEE REVERSE SIDE FOR EXPLANATION OF THE REGULATION GOVERNING THIS CERTIFICATE
The Original Certificate is to be presented to the person to whom awarded. One copy is to be retained by the issuing agency, and one copy is to be filed with the N.Y.S. Identification and Intelligence System, Executive Park, Stuyvesant Plaza, Albany, N.Y.

1. For use by NYSIIS

HOLDER OF CERTIFICATE

2. Last Name: BASILE, First Name: PHILIP Middle Initial:

3. NYSIIS Number (If not known, submit fingerprints to NYSIIS. If fingerprints are unobtainable, complete items 13-18 below.)

4. Crime or offense for which convicted: T18 USC 371 & 1001

5. Date of arrest: June 27, 1983

6. Date of sentence: February 16, 1984

7. Court of disposition (Court, Part, Term, Venue):
U. S. D. C. EASTERN DISTRICT OF N.Y.
Hon. Joseph McLaughlin
(Certificate requested from N.Y. Supreme Court, County of Nassau.)

8. Certificate issued by:
a ☒ COURT INDICATED IN NO. 7
b ☐ STATE BOARD OF PAROLE

9. Date this certificate issued

10. If this Certificate replaces Certificate of Relief From Disabilities previously issued, give date of previous Certificate.
Date: ☒ Not Applicable

11. CHECK ONE BOX ONLY
This certificate shall;

a ☐ Relieve the holder of all forfeitures, and of all disabilities and bars to employment, excluding the right to retain or to be eligible for public office, by virtue of the fact that this certificate is issued at the time of sentence. The Date of Sentence in this case must agree with the Date Certificate Issued.

b ☐ Relieve the holder of all disabilities and bars to employment, excluding the right to be eligible for public office.

c ☑ Relieve the holder of the forfeitures, disabilities or bars hereinafter enumerated
ABC LAW § 126 Prohibiting Holding of Liquor License.

12. ☒ This certificate shall be considered permanent.

☐ This certificate shall be considered temporary until ______________ After this date, unless revoked earlier by the issuing court or parole board, this certificate shall be considered permanent. A person who knowingly uses or attempts to use a revoked certificate in order to obtain or exercise any right or privilege that he would not be entitled to obtain or to exercise without valid certificate shall be guilty of a misdemeanor.

13. Signature of issuing official(s): ROBERT ROBERTO JR.

Print or type name(s): Hon. Robert Roberto

14. Title(s): JUSTICE OF THE SUPREME COURT OF THE STATE OF N.Y. 10th JUDICIAL DISTRICT, NASSAU COUNTY

Complete the following for N.Y.S.I.I.S., only if fingerprints are not obtainable

15. Sex: ☒ Male ☐ Female

16. Color: White

17. Height: 5 ft. 8 in.

18. Date of Birth (Month, Day, Year): June 4, 1935

Form DP-53 (9/66)

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU
--X

In the Matter of the Application of

PHILIP BASILE

for a Certificate of Relief from Disabilities.

--X

AFFIDAVIT IN SUPPORT OF AN APPLICATION FOR CERTIFICATE OF RELIEF FROM DISABILITIES

STATE OF NEW YORK)
) ss.:
COUNTY OF NASSAU)

PHILIP BASILE, being duly sworn deposes and says:

1. That your deponent was born in 1935 in New York City, New York and presently resides at 3385 Jason Court, Bellmore,, New York.

2. That your deponent is making this application so that he may be relieved from the provisions of Section 126 of the Alcoholic Beverage Control Law which prohibits anyone who has been convicted of a felony form trafficking in alcoholic beverages.

3. That your deponent was convicted in 1983 in the United States District Court for the Eastern District of New York under docket number CR-83-289-02 of violation of U.S.C.A., Title 18, Sections 1001 and 371 which in fact were making a false statement to the Federal Government and conspiracy to aid another in making false and fraudulent statements.

4. That your deponent was convicted before Hon. Joseph McLaughlin and sentence was suspended on both counts and your deponent was placed on probation for five years. (annexed hereto is an extract of the criminal docket.)

5. That from the time your deponent was 11 years old your deponent has been working to support his family and himself.

6. That at the time your deponent was indicted and tried he ran a very substantial and successful set of nightclubs.

7. That your deponent was indicted for making a false statement to the Federal Government, and for conspiracy to aid another in making false and fraudulent statements.

8. That your deponent realizes that he was convicted of both of these charges, however, he still protests his innocence. He has insisted from his first meeting with trial counsel that he never authorized a no-show job for one Henry Hill. Rather, he believed that he had in fact given Hill a real job. It was only after the Grand Jury investigation commenced that he learned that one Barbara Kleidman had made an unauthorized decision to provide Hill with false pay envelopes.

9. That your deponent is on probation for five years and is fully living up to the condition of that probation.

10. That as a condition of probation your deponent must set up a $250,000 trust fund for probationers and parolees. He also performs 10 hours of community service per month as directed by the Probation Department.

11. That your deponent is a first offender.

12. That your deponent is 49 years old and, until this recent conviction, has had absolutely no difficulties with the law.

13. The the crime for which he stands convicted occurred more than five years ago. Since that time, there has been no suggestion of illegality on your deponent's part.

14. That your deponent has had no convictions

under the Laws of the State of New York and has fully set forth his criminal record.

15. That your deponent is an "eligible offender" as that term is defined in Section 700 of Article 23 of the Correction law of the State of New York.

16. That although your deponent was convicted for a Federal Crime, your deponent believes that this court has the power and jurisdiction to grant the relief requested herein.

17. That in Application of Michael DaGrossa v. Norman Goodman, 72 Misc. 2d 806, 339 N.Y.S.2d 502 the Court held that an applicant who has a conviction for a federal crime is entitled to seek relief from State disabilities and his application should be processed in the same manner as if the conviction were in the State Court and the Justice before whom the conviction was obtained was not longer sitting.

18. The DaGrossa principle was applied in the Nassau County Supreme Court In the Matter of the Application of Saverio Salvatore Aiello, for a Certificate of Relief from Disabilities, whereby Justice Bertram Harnett, issued a Certificate of Relief from Disabilities to the applicant ex parte on October 21, 1984.

The applicant Saverio Salvatore Aiello, had been convicted of U.S.C.A Title 18, Sections 2315 and 371 in 1959.

19. That your deponent would like to point out that his only criminal conviction was in 1983 and that he has always conducted himself as a faithful, dutiful and loving husband and father.

20. That he has been married to his wife Arlene (formerly Bianco) since June 15, 1958, and has always

provided for her and supported her fully.

21. That they have raised three children. Frank, age 24, is a high school graduate who works for his father. The same is true of Roger, age 19, who is also a high school graduate. Dawn, age 21 is a recent graduate of the University of Hartford, with a degree in special education.

22. That your deponent is not seeking blanket relief from civil disabilities but only asks relief from § 126 of the Alcoholic Beverage Control Law so that he may support his wife and his family and be a productive member of the community.

WHEREFORE, your deponent respectfully requests that this Court grand a Certificate of Relief from Disabilities, to wit: Alcoholic Beverage Control Law § 126 prohibiting a convicted felon of holding a liquor license.

PHILIP BASILE

Sworn to before me this
19th Day of July, 1984.

Notary Public

2

I. CHARGES

U.S. TITLE SECTION	OFFENSES CHARGED	ORIGINAL COUNTS
18:371	Conspiracy to aid another in making false and fraudulent statements	1
18:1001 and 2	False and fraudulent statements	1

SUPERSEDING COUNTS

☐ JURY

II. KEY DATE

INTERVAL ONE
KEY DATE
EARLIEST OF
☐ arrest
☐ summons
☐ custody
☐ appears on complaint

KEY DATE 6-22-83
APPLICABLE

END ONE AND/OR BEGIN TWO (OR RESTART PERIOD TO TRIAL)
☒ Indictment filed/unsealed
☐ consent to Magr. trial on complaint
☐ Information
☐ Felony Waiver

KEY DATE
LATEST OF
☐ 1st appears on pending charge /R43
☐ Receive file R20 21
☐ Supsdg ☐ Ind ☐ Inf
☐ Order New trial

END INTERVAL TWO
KEY DATE 12-13-83
APPLICABLE
☐ Dismissal
☐ Pled guilty
☐ Nolo
☑ Trial from

1st appears with or waives counsel	ARRAIGNMENT	1st Trial Ended	RE TRIAL	2nd Trial Began	DISPOSITION DATE	SENTENCE DATE	PTD ☐ Nolle ☐ Pros	FINAL CHARGES DISMISSED
					2/16/84	2/16/84		☐ on S.T grounds ☐ W.P ☐ WOP

III. MAGISTRATE

		DATE	INITIAL/NO
Search Warrant	Issued		
	Return		
Summons	Issued		
	Served		
Arrest Warrant Issued			
COMPLAINT ▶			

INITIAL APPEARANCE DATE ▶
PRELIMINARY EXAMINATION OR ☐ REMOVAL HEARING
Date Scheduled ▶
Date Held ▶
☐ WAIVED ☐ NOT WAIVED
☐ INTERVENING INDICTMENT
Tape Number
INITIAL/NO.

OUTCOME:
☐ DISMISSED
☐ HELD FOR GJ OR OTHER PROCEEDING IN THIS DISTRICT
☐ HELD FOR GJ OR OTHER PROCEEDING IN DISTRICT BELOW

Date of Arrest
OFFENSE (In Complaint)

Show last names and suffix numbers of other defendants on same indictment/information.

RULE ☐ 20 ☐ 21 ☐ 40 ☐

ATTORNEYS
U.S. Attorney or Asst.

Jerry D. Bernstein, Sp. Atty., Strike Force

Defense: 1 ☐ CJA. 2 ☒ Ret. 3 ☐ Waived. 4 ☐ Self. 5 ☐ Non/Other. 6 ☐ PD. 7 ☐ CO

JUDD BURSTEIN
150 E. 58th St
NY, NY
(212)486-1717

A TRUE COPY
ATTEST
DATED 7/19/19 84
ROBERT C. HEINEMANN
CLERK
BY
DEPUTY CLERK

BAIL • RELEA
PRE-INDICTMENT
Release Date
☐ Bail Denied
AMOUNT SET
$
Date Set
☐ Bail Not Made
Date Bond Made
Cond.
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POST-INDICTMENT
Release Date
☐ Bail Denied
AMOUNT SET
$
Date Set
☐ Bail Not Made
Date Bond Made
Cond.
☐ 10
☐ Su
☐ Co
☐ 3rd
☐ Ot

APPEALS FEE PAYMEN

FINE AND RESTITUTION PAYMENTS

☐ Docket Entries Begin On Reverse Side

DATE	RECEIPT NUMBER	C.D NUMBER	DATE	RECEIPT NUMBER	C.D NUMBER

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

---X

In the Matter of the Application of

PHILIP BASILE

For a Certificate of Relief from Disabilities.

---X

AFFIDAVIT IN SUPPORT OF AN APPLICATION FOR A CERTIFICATE OF RELIEF FROM DISABILITIES

D'AMATO, FORCHELLI, LIBERT,
SCHWARTZ, MINEO & WEINSTEIN
COUNSELORS AT LAW
120 MINEOLA BOULEVARD
P. O. BOX 31
MINEOLA, NEW YORK 11501
(516) 248-1700
(516) 742-1400

	[illegible] FILED. MG			
6-27-83	Before McLaughlin, J. Case called. Counsel for all sides present. Defts present in custody. Trial set for 11-28-83 @9:30am. Waiver of Speedy Trial Executed. em	6-27-83 11-28-83	T	III
7-1-83	Appearance Bond, filed. em			
7-1-83	Notice of Appearance, filed. em			
'-1-83	By McLaughlin, J. Order of Excludable Delay dtd 6-27-83 & filed. em			
)-18-83	Letter dtd 10-13-83 from Gerald L. Shargel to J. McLaughlin, In RE: adj'mt of filing motions until 10-21-83 & filed. em			
25-83	Memo of law in support of deft's motion for return of subpoenaed books & records, filed. em			
·25-83	Defts notice of motionfor an order granting return of subpoenaed books & records for which the govt no longer has any evidentiary use, filed. em			
!-83	Ltr from Special Atty Jerry D. Bernstein to J. McLaughlin dtd 10-24-83 re: adj'ment of trial as to both defts from 11-28-83 to 12-5-83 w/consent of all attys, filed. (ir)			
3 21	Affidavit of Jerry D. Bernstein, filed. em			
-5	Before McLaughlin, J. Case called. Pretrial conf. held. Jury sel. set for 12-12-83. Trial set for 12-12-83. em	11-28-83 12-12-83	T	IVa
9	By McLaughlin, J. Order of excludable delay dtd 12-5-83. em			
13	Affidavit of Laura A. Ward. em			
13	Memo of law in support of motion of Govt to admit certain evidence. em			
12	Before McLaughlin-Case called. Deft' and Counsel pres. Varios Motion to Sever-argued & Granted. Govt's Motion to try both deft's Simultaneously with two juries granted. Jury selected in the Paul Vario Case. Paul Vario Jury trial to continuted to 12-13-83 @ 2pm Jury Selection in Basile case to commence 12-13-83 @ 9:30Am. jn			
—3	Before McLaughlin, J. Case called. Deft' pres w/counsel Jury Selected and sworn. Govt opens. Deft opens. Trial cont'd to 12-14-83 @ 9:30 am.			
	Before McLaughlin-Case called. Deft' and Counsel pres Jury Trial Resumed. Jury Trial Continued. to 12-15-83. jn			
	Before McLaughlin-Case called Deft' and Counsel present. Jury Trial resumed. . Jury Trial continued. to 12-16-83 @ 9:30 am. jn			
	Steno's Transcript dtd 12-13-83 @ 1:450 Pm . jn			
	Steno's Transcript dtd 12-14-83 @ 9:30 AM. jn			
	Before McLaughlin-Case called. Deft and Counsel present. Motion by Deft' Hersh & Kleidman to see grand Jury testimony prior to testifying. Motion denied. jn			
	Steno's Transcript dtd 12-15-83 @ 9:30am. jn			
	Steno's Transcritp dtd 12-16-83 @ 9:30am. jn			
	Before McL, J. Case called. Deft & counsel pres. Jury trial resumed. Trial cont 12-20-83. em			
	Before McL, J. Case called. Motion for judgment of acquittal Denied. Trial cont'd to 12-21-83 @9:30am. em			
	Steno's Transcript dtd 12-12-83 @8:30am. em			

CONTINUED TO PAGE

- Continued -

BASILE, PHILIP

83 00289
Yr. Docket No.

DATE	PROCEEDINGS (continued) (Document No.)	V. EXCLUDABLE D (a) (b)
12-27-83	By McL. Order dtd 12-9-83 that Ellen Hersh, Lawrence Tortorisi, Mark Puma, Joseph Buglisi & Barbara Kleidman who have been called to testify in this case are ordered to testify or provide inform. which was refused on the basis of the privilege against self-incrimination, etc. (see order for details) em. em	
12-27	Stenographer's Transcript dtd 12-20-83 @9:30am. em	
12-28	Stenographer's Transcript dtd 12-19-83 @10:00am em	
12-28	Stenographer's Transcript dtd 12-21-83 @9:30am. em	
12-21	Before McLaughlin, J. Case called. Deft & counsel present. Jury trial resumed. Verdict Guilty on Ct. 1 & 2. Jury discharged. Sentence set for 2-9-84 @2:00pm. em	
1984 1-11	By McL. Order of sustenance dtd 12-21-83 & filed. em	
2-1	Ltr. dtd 1-30 from Judd Burstein to McL. Re: adj'mt of sentencing date until 2-16 @2:00pm. em	
2-17	Pre-sentence Memorandum. jn	
2-16	Before Mclaughlin-Case called. Deft and Counsel pres. Sentencing held. Guilty on Cts 1 & 2. Imposition of sentence is suspended. Deft on probation for 5 years with/special condition of Probation(trust) plus 10 hrs of community service per month. Sentence Imposed Ct2 to run concurrent to sentence imposed on ct. 1 Motion for Judgment of acquittal denied.	
2-27	By McLaughlin- J & C dtd 2-21-84. jn	
** 02-22	*** NOTICE OF APPEAL (deft-appellant) fm jdgmnt entered 02-27-84, filed w receipt #56065 for C of A docketing fee. C of A notified. Copies dis "A" dis. vw	
3-8-84	Steno's Transcript dtd 2-16-84 @ 2:30pm. jn	
03-14	Record cert & sent to C of A. Ack req. vw	
3-15	Scheduling order fm C of A that record be prepared by 03-29-84, appellant's brief be filed by 04-23-84, appellee's brief by 05-21-84, & argument of appeal heard during week of 05-28-84. C/A# 84 1081 vw	
3-22	Deft's Motion to stay execution of sentence of Probation pending appeal. jn	
03-30	Ack fm C of a for receipt of record. vw	
4/2	ORDER BY MCLAUGHLIN that the sent. of prob. & conditions imposed on 2/16/84 are stayed pending a hrg. & disposition of the appeal herein. tv c/m	
4-17	Ltr dtd 4-9-84 from Jerry D. Bernstein to Mcl-re: In receipt of Copy of the Court's Order staying execution of sentence. jn	
5-15	Before McLaughlin-Case called. Motion argued. Decision entered on the record. Motion to lift stay is granted. terms of probation shall be implemented by 6-1-84. jn	
5-21	By McLaughlin-Order dtd 5-17-84 vacating Order of 3-30-84. and that Sentence imposed by court on 2-16-84 commence on 6-1-84. jn	
5-23	Steno's Transcript. dtd 12-12-83. jn	
7-5	By McLaughlin- Amended J'ment and Probation/Commitment Order dtd 6-28-84. ISS on Counts 1 & 2, Probation for fives years and deft to establish a special fund in amt of $250,000.00 jn	

Interval (per Section II)

Start Date / End Date

PERSONAL & UNOFFICIAL

SUPREME COURT OF THE STATE OF NEW YORK
JUSTICES' CHAMBERS
MINEOLA, N.Y. 11501

ROBERT ROBERTO, JR.
JUSTICE

April 29, 1988

Senator Leahy
Senate Judiciary Committee
224 Dirksen Building
Washington, D.C. 20510

Dear Senator Leahy:

I am most concerned about a recent article that appeared in the New York Times (a copy of which is enclosed). The article seems to confuse two different issues that were covered at the hearing.

The first concerns the investigation by the Nassau County District Attorney's office on the twelve Assistant District Attorneys who received vacation and sick pay upon leaving the office. My testimony was, and I'm sure the record will reflect, that I testified before the Grand Jury and received immunity by operation of law and therefore I did not consider myself a target. The article indicates that I was given immunity in exchange for my testimony. The article would then give the impression that as a result of that testimony Mr. Cahn was subsequently convicted and sentenced to a year in jail.

The facts are that the Grand Jury did not find any wrong doing in their investigation on the vacation and sick pay and no one was charged. The facts will also show that I did not testify before the Grand Jury or the trial of William Cahn in Federal Court nor was I ever questioned by the U.S. Attorney or anyone else.

I am bringing these matters to your attention most respectfully so that any misunderstanding can be corrected.

Sincerely,

Robert Roberto, Jr.

RR:pc
enclosure

3 PROPOSED FOR THE U.S. BENCH BY D'AMATO ARE SCRUTINIZED

(By Clifford D. May)

WASHINGTON, April 23.—Three candidates for Federal judgeships recommended by the Senator Alfonse M. D'Amato of New York have come under unusually intense scrutiny in regard to their ethics or qualifications.

At a Senate Judiciary Committee hearing on Thursday, Mr. D'Amato, a Republican, praised all three as "men of integrity." He said he was acquainted with two of the men, Robert Roberto Jr. and Howard E. Levitt, both of whom are justices of the State Supreme Court in New York, and that he knew a third, Stuart A. Summit, a lawyer in private practice, "by reputation."

Leslie Proll, director of the Judicial Selection Project of the Alliance for Justice, a public-interest coalition, said the organization had "great concern about these three nominations."

"These are powerful positions, lifetime judgeships, and it seems that D'Amato is viewing them as a form of political patronage," she said. "Citizens have the right to expect a judge appointed for life to be the most qualified and capable and to be of the highest level of integrity and honesty."

Paul Windels, a lawyer who is a senior member of Mr. D'Amato's judicial selection committee, suggested that such criticism may be "politically motivated."

Justice Roberto, recommended as for the Eastern District of New York, was questioned in the Judiciary hearing about a decision he made in 1984 allowing Philip Basile, a Long Island nightclub operator who had been convicted of conspiring with organized-crime figures, to retain his liquor license. Mr. Basile had been charged with providing a dummy job to someone with ties to organized crime.

Mr. Basile is a friend of Mr. D'Amato. At Mr. Basile's trial in 1983, the Senator was the only defense witness, testifying that he knows Mr. Basile as "a man of honor and truth."

Mr. Basile's lawyer was Senator D'Amato's brother, Assemblyman Armand D'Amato, Republican of Mineola, NY.

Explaining his decision in the case to Senator Patrick J. Leahy, Democrat of Vermont, Justice Roberto, who is 57 years old, noted that Mr. Basile had a "very favorable probation report."

Mr. Leahy also asked Justice Roberto why he had failed to note on his Senate questionnare that he had been investigated as one of 12 aides to the Nassau County District Attorney, William Cahn. The inquiry in 1976 focused on whether the aides had received payments for false sick claims and vacation days.

Justice Roberto said he had cooperated with the grand jury in that conspiracy investigation and, in return, had received immunity. "I didn't consider myself a target" of the investigation, he said.

Mr. Cahn was subsequently convicted for double billing his expenses and was sentenced to a year in jail.

An evaluation committee of the American Bar Association has rated Justice Roberto as "well qualified" to serve as a Federal judge. (The A.B.A.'s three other categories are "exceptionally well qualified," "qualified" and "not qualified.")

Mr. Summit, who been proposed for the Second Circuit Court of Appeals, was questioned about his experience. Mr. Summit, a 52-year-old New York lawyer in private practice and once a partner of the former Deputy Attorney General, Arnold I. Burns, has never been a judge.

"It's not that unusual for a distingushed practitioner of the law or someone from the academic world to go on that court without judicial experience," said Mr. Windels, Senator D'Amato's aide.

A majority of the American Bar Association evaluation committee rated Mr. Summit qualified to serve as a Federal judge. A minority on that committee, however, rated him as not qualified. The bar association does not explain its evaluations.

The final recommendation before the Judiciary Committee was that of Justice Levitt, 59, proposed for the bench in the Eastern District. Justice Levitt was asked about his past role as a Nassau County Republican leader under the former party leader, Joseph M. Margiotta.

In 1983, Mr. Margiotta was convicted on Federal mail fraud and extortion charges. Mr. Margiotta was also linked to a kickback scheme in which Nassau County workers were compelled to contribute 1 percent of their salaries to the local Republican party.

Mr. Levitt said he had not been aware of the use of coercion to secure party contributions and that as Town Attorney for Hempstead from 1967 he had "never checked on contributions" before making decisions on promotions or raises.

The American Bar Association has given Mr. Levitt a rating of well qualified.

In recent days, Senator D'Amato has made two other recommendations to the Federal bench.

One of those he proposed, R. Kimba Wood, 44, a lawyer in private practice was approved by the Judiciary Committee on April 14 for a judgeship in the Southern District. The American Bar Association rated Ms. Wood as qualified.

The Senator has also recommended R. Harcourt Dodds for the bench in the Southern District. It is the Senator's first recommendation of a black to that court. Mr. Dodds, 50, is executive assistant district attorney in Brooklyn. He has not yet been rated by the American Bar Association:

Candidates for Federal judgeships are generally proposed by the senator of the President party. In New York under a special agreement, one of four recommendations is made by Senator Daniel Patrick Moynihan, a Democrat. After a formal nomination by the President, they are voted on by the Senate Judiciary Committee.

PERSONAL & UNOFFICIAL

SUPREME COURT OF THE STATE OF NEW YORK
JUSTICES' CHAMBERS
MINEOLA, N.Y. 11501

ROBERT ROBERTO, JR.
JUSTICE

May 3, 1988

Senator Patrick Leahy
Senate Judiciary Committee
224 Dirksen Building
Washington, D.C. 20510

Dear Senator Leahy:

Enclosed please find a copy of a report prepared by The Fund for Modern Courts. The report speaks for itself; however, I draw your attention to pages 16 and 23 as they refer to Judge Levitt and myself.

I am also enclosing a copy of a U.S. District Court Probation Report on Philip Basile prepared on February 27, 1985. There is no question that this report was not before me at the time I signed the Certificate of Relief; however, I was in possession of part of the information contained therein, but it is relevant as to why he should have been given at least the opportunity to apply for the liquor license.

I do not wish to "bombard" you with letters and reports, but I felt that you should have a complete record.

Sincerely,

Robert Roberto, Jr.

RR:pc
enclosures

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
PROBATION OFFICE

JAMES F. HARAN
CHIEF PROBATION OFFICER
RALPH K. KISTNER
DEPUTY CHIEF PROBATION OFFICER

175 REMSEN STREET ROOM 1200
BROOKLYN 11201 4388
718 330 2838

US COURTHOUSE
UNIONDALE AVENUE AT HEMPSTEAD TURNPIKE
UNIONDALE 11553
516 485-7140

Brooklyn, New York
February 27, 1985

Mr. Philip Basile
3385 Jason Court
Bellmore, New York 11710

Dear Mr. Basile:

This letter is being prepared with the understanding that you may submit it during proceedings before the New York State Liquor Authority regarding the revocation of your liquor licenses:

Philip Basile was sentenced in this court on February 16, 1984 by U.S. District Judge Joseph McLaughlin who suspended the imposition of sentence, and placed him on five years probation. There were two special conditions: one, ordering the probationer to establish a fund in the amount of $250,000 to be deposited with the U.S. Probation Department. The court ordered that the interest on this money was to be used for probationers and parolees in need of funds to seek employment, employment counselling, clothing, tools, carfare etc. to assist in their reentry into the legitimate job market. The $250,000 principal is to be returned to Basile at the end of the probation term; second, there was a special condition that he perform 10 hours of community service per month over the probation period. (This was later modified to allow the probationer to perform 600 hours of community service over the probation period).

This sentence was imposed after Basile had been found guilty of a two count indictment which charged him with submitting false statements to the U.S. Bureau of Prisons and the U.S. Parole Commission regarding the employment of Henry Hill (violations of 18 USC Sects. 371 & 1001).

Probation began, pursuant to court order, on June 1, 1984. Since that time, Mr. Basile appears to have made an excellent adjustment to probation supervision. He has reported as directed, he has complied with all of our directives, and of course, there have been no new arrests. Regarding the special conditions of probation, the probationer has always expressed a willingness tp comply with the court order to pay $250,000 for use by the Probation Department. On at least two separate occasions he has, through his attorney, asked who the check should be made payable to and when should it be delivered. However, this office is still involved in the establishment of a vehicle for handling this money, and to date, we have not asked Mr. Basile for the $250,000. Regarding the special condition ordering community service, Mr. Basile has complied with this requirement in a most satisfactory manner, beyond our own hopes and expectations. We arranged for Mr. Basile to perform his community service at a senior nutrition program operated by Catholic Charities in Rockville Centre. Although he is a successful restauranteur, we explained to him that he would not work in a managerial capacity, but rather would assist in the day-to-day tasks of serving hot lunches to approximately 100 senior citizens. He has adhered to this directive, and to date, he has completed approximately 400 hours of "volunteer work". He assists in every aspect of the senior nutrition program including meal preparation service and clean-up. He has been working four and even five days per week, usually from approximately 10:30A.M. to 2:30P.M. He has regularly been rated as outstanding by the site manager who oversees his work. Officials at the program have reported that his attitude has been superior, and he is well-liked by both the staff and their senior citizen clientele. We have conducted unannounced visits to the community service site on several occasions, and each time Mr. Basile has been clearing table cloths, sweeping a floor, or doing kitchen clean-up. In addition, the probationer's wife accompanies him daily, performs the same tasks and her services have been appreciated and welcomed.

It would seem that if there were any flaws in his character or personality at the time the offense was committed, his conduct and disposition, as reflected by the performance of his community service work have improved.

We do not recommend that Mr. Basile's liquor license be rescinded. To the contrary, if he lost his licenses, it would obviously severely impact upon his ability to work and earn a living, which are probation requirements. In addition, loss of income might interfere with his ability to pay the $250,000, which ultimately will be put to good use for very needy people. Now that the Court has decided to impose a non custodial sentence, we feel he should have an opportunity to earn a living, under our direction.

Finally, please be advised that we expect that Mr. Basile will be under our supervision for the full five year probation term. During that period of time we will continue to monitor his conduct, both at his businesses, and elsewhere, closely. If there should be any violation of the probation conditions, we would promptly return him to Court, regardless of his positive adjustment as of this time. And, we would be inclined to report any violations that came to our attention, to the state liquor authorities.

If you have any questions, please contact U.S. Probation Officer Ketcham at 718-330-2617.

Very truly yours,

JAMES F. HARAN
Chief U.S. Probation Officer

RONALD F. KETCHAM
U.S. Probation Officer

RFK:ag

United States Senate
COMMITTEE ON THE JUDICIARY
WASHINGTON, DC 20510-6275

May 9, 1988

Honorable Robert Roberto, Jr.
Supreme Court of the State of New York
Justices' Chambers
Mineola, N.Y. 11501

Dear Judge Roberto:

Thank you for your letters of April 28 and 29 and May 4, 1988, providing additional information about the Basile certificate matter and an explanation of the grand jury matters discussed in the New York Times on April 25, 1988.

I understand your concern that the Times article may leave a misleading impression, and I want you to know that I do understand that the state grand jury before which you testified in 1976 was different from the federal grand jury that indicted William Cahn. I also understand from your letter that you did not testify before the federal grand jury nor at Mr. Cahn's trial. In order to correct any misunderstanding which may have arisen, I will circulate your letter of April 29 to the other members of the Judiciary Committee along with your other letters.

It is my understanding that you did testify before the state grand jury that investigated vacation and sick pay claims by former Assistant District Attorneys, and as a result of that testimony received immunity by operation of law. I am not sure I understand, however, who or what the target of that state grand jury was. What is your understanding of who the target was? If the grand jury was investigating vacation pay claims by Assistant District Attorneys such as yourself, do you know why were you allowed to obtain immunity by appearing before the grand jury?

I would also be interested in your recollection of the substance of your grand jury testimony. Did you ever obtain the recorded minutes of that testimony? In addition, do you recall what conversations you had with attorneys and investigators in the District Attorney's office prior to being called before the grand jury? I have asked the Committee staff to obtain additional information on these points, and would appreciate any information you can provide.

Thank you again for your letters.

Sincerely,

Patrick J. Leahy
United States Senator

SUPREME COURT OF THE STATE OF NEW YORK
JUSTICES' CHAMBERS
MINEOLA, N.Y. 11501

ROBERT ROBERTO, JR.
JUSTICE

May 18, 1988

Senator Patrick Leahy
Senate Judiciary Committee
224 Dirksen Building
Washington, D.C. 20510

Dear Senator Leahy:

In reply to your letter of May 9, 1988, please be advised of the following.

The Grand Jury inquiry arose out of the fact that William Cahn, a Republican, who served three terms as District Attorney of Nassau County (12 years), was defeated in the election of 1974 by Denis Dillon, a Democrat. It was anticipated that Denis Dillon would not retain all or most of the assistant district attorneys who had been appointed and served under William Cahn. This created concern among the assistant district attorneys who knew they would not be retained by Denis Dillon and who did not want to lose their entitlement for unused sick and vacation pay, which was allowed to them under County Law.

I will attempt to answer your questions in the order presented. To aid in your understanding of my answers, enclosed you will find an affidavit from Denis Dillon, who was the District Attorney at the time of the investigation and who still is the District Attorney, which I respectfully submit, sheds light to some aspects of your questions.

(1) Yes, I did testify before the Grand Jury and I did receive immunity by operation of law.

(2) I do not know who the target of the investigation was except what is set forth in Mr. Dillon's affidavit which states: "The investigation focused on the record keeping procedures of the office under former District Attorney William Cahn as well as the manner, computation and certification of the severance pay received by the assistant district attorneys." The affidavit goes on to say that "Judge Roberto was not a target of the grand jury inquiry nor was he ever informed by my office that he was a target of the investigation."

SUPREME COURT OF THE STATE OF NEW YORK
JUSTICES' CHAMBERS
MINEOLA, N.Y. 11501

ROBERT ROBERTO, JR.
JUSTICE

Senator Patrick Leahy pg -2-

(3) It is my understanding that all assistant district attorneys who were asked to do so (there were 15 as I recall) testified before the grand jury and all received immunity before the grand jury by operation of law in the same manner as I did. The issue before the grand jury seemed to be whether or not an assistant district attorney was a county employee covered under the County Law as it related to unused sick leave and vacation pay (severance pay), as well as the manner in which the computation for severance pay was made.

(4) I was never furnished with the recorded minutes of the grand jury; these, I believe, are secret and I was not entitled to them. My best recollection of my testimony is that I described the steps that I had taken in ascertaining the eligibility of assistant district attorneys for severance pay and other benefits, their lawfull entitlement to the same, and the manner in which my own claim was computed.

I further revealed that by memo in November 1974 I requested Paul Kramer, the assistant district attorney in charge of the Commercial Fraud Bureau and who was also a CPA and in charge of personnel in William Cahn's office, to ascertain what benefits, if any, the assistant district attorneys who would be leaving the office at the end of the year would be entitled to, including accumulated vacation and sick pay and conversion of medical benefits (a copy of memo enclosed).

Paul Kramer asked for a ruling from the county attorney as to what benefits were available. He received an opinion in reply to the effect that assistant district attorneys were, indeed, county employees and as such, together with all other county employees, were entitled to receive severance benefits as provided by County Law.

It is my recollection that benefits were available as follows:
(a) accumulated vacation time
(b) 25% of accumulated sick time
(c) maximum 60 days

This information was circulated to those leaving the office

SUPREME COURT OF THE STATE OF NEW YORK
JUSTICES' CHAMBERS
MINEOLA, N.Y. 11501

ROBERT ROBERTO, JR.
JUSTICE

Senator Patrick Leahy pg -3-

and claims were submitted by the A.D.A.'s who qualified.

My recollection is that, as to my own claim, it exceeded the 60-day maximum permitted and therefore my claim was limited to 60 days, which is all I requested and received. Evidently, Denis Dillon made the same request to the county attorney in April 1975. Enclosed is a copy of the memo from the county attorney to Denis Dillon.

(5) My recollection is that the conversation that I had with the district attorneys prior to my testimony before the grand jury was the same as my Grand Jury testimony.

The affidavit from Denis Dillon also states that it was requested that I execute a waiver of immunity before the grand jury; that I refused and did testify before the grand jury and recieved statutory immunity. My recollection is that when I met with Mr. Leff, the chief assistant district attorney, prior to my Grand Jury testimony, I was advised that I would not be asked to waive immunity. However, when I did go before the grand jury another assistant asked if I would waive immunity and I stated that I had been advised that it would not be required and I then did testify before the grand jury. Denis Dillon's affidavit concludes that the investigation did not reveal any evidence of criminal wrongdoing and was closed.

I have tried to answer your questions to the best of my recollection and belief, considering that the event took place more than 12 years ago. If you or your staff have any other questions, I will cooperate to the best of my ability.

Sincerely,

Robt Roberto

Robert Roberto, Jr.

RR:pc
enclosures

COUNTY OF NASSAU

Inter-Departmental Memo

To: PAUL KRAMER, Assistant District Attorney
Chief - Commercial Frauds Bureau

From: ROBERT ROBERTO, JR., Executive Assistant District Attorney

Date: November 8, 1974

Subject: Employee Termination

During the next two months many of the Assistants will be terminating their employment. It would be appreciated if you could check with the Comptroller's Office to answer the following questions:

1. What severance pay for accumulated sick time and vacation time is available;

2. The procedure for converting the medical and Major Medical coverage and dental coverage to individuals from the present plan;

3. Any other benefits which might be available.

WILLIAM CAHN
District Attorney

RR:cm

ROBERT ROBERTO, JR.
Executive Assistant District Attorney

COUNTY OF NASSAU

Inter-Departmental Memo

To: Dennis Dillon
District Attorney

From: John F. O'Shaughnessy
County Attorney

Date: April 4, 1975

Subject: Opinion re: Severance Pay and Other Entitlements

Receipt is acknowledged of the inter-departmental memorandum of Mr. Henry P.DeVine, Chief Assistant District Attorney, in which the opinion of this office was requested with regard to the following question:

Question Presented

Upon termination of County service, what entitlements are owed to exempt employees and officers of the District Attorney's Office:

Law

Section 92(1) of the General Municipal Law reads, in part, as follows:

> "1. The governing board of each county. ...
> by locallaw, ordinance or resolution . . .
> may grant vacations, sick leaves and leaves
> of absence to officers and employees. . ."

Ordinance No. 34-1969, as amended, regulates vacations, sick leaves and leaves of absence for County officers and employees. Section 11(3)(b) of the aforesaid ordinance provides:

> "Subject to the exclusions hereafter provided, the provisions of this ordinance shall apply to all officers and employees of the County of Nassau and those paid from County funds. Except for subdivisions 6 and 7 of section 3, with subdivision 7 being inapplicable to members of the police force or faculty at Nassau Community College, this ordinance shall not be applicable to the following:
>
> * * *
>
> 3. officers and employees of the:
>
> * * *
>
> b. Office of the District Attorney who are classified as exempt."

In this regard, subdivisions 6 and 7 of section 3 of the aforesaid ordinance provides:

> "6. Accumulated Vacation Time for Termination Purposes
> Unless discharged for cause, an officer or employee or his legal representative shall receive, upon the termination of service or separation from service, or upon commencing a leave of absence to enter into military service, a cash payment for the monetary value of his accumulated vacation time (including converted sick time) as provided in subdivision 7 of this section, not to exceed a total of sixty (60) days. Included in the total of such accumulated vacation time shall be pro-rated "additional vacation time" when such separation, or termination other than discharge for cause, occurs on a day other than the employee's anniversary date. The additional vacation time credited to an employee by paragraph (a) of subdivision 2 of this section shall be pro-rated from the last anniversary date to the date of the employee's separation, or termination for reasons other than cause.

> "7. Accumulated Sick Leave for Termination Purposes
> An officer or employee, upon termination of service, shall receive additional vacation time in the amount of twenty-five (25%) per cent of his sick leave accumulated but unused at the time of such termination, but the sum of such accumulated sick leave and vacation time which may be accumulated shall not exceed the total of sixty (60) days as set forth in subdivision 6 of this section."

Upon termination of service for other than cause, the only benefits owed to the employees and officers in question would be accumulated vacation time and accumulated sick leave. Such termination benefits must be paid in accordance with the provisions of subdivisions 6 and 7 of section 3 of Ordinance No. 34-1969, as amended.

In this regard, attention is directed to subdivisions 1 and 2 of section 3 of Ordinance No. 34-1969, as amended, which read, in part, as follows:

> "Section 3. Vacations
> 1. Basic Vacation Time.
> Upon completion of thirteen (13) bi-weekly pay periods of service, an officer or employee shall be credited with six and one-half (6-1/2) days of vacation. Thereafter, he shall earn vacation time at the rate of one-half (1/2) day per bi-weekly pay period of service.
> 2. Additional Vacation Time for Completed Service.
> (a) On the anniversary day of each year of actual completed service, an officer or employee shall be credited with additional vacation time in accordance with the following schedule:

"Years of Actual Completed Service	Additional Vacation
1	1 day
2	2 days
3	3 days
4	4 days
5	5 days
6	6 days
7	7 days
8 or 9	8 days
10 or more	9 days"

Subdivision 1 of section 4 of Ordinance No.34-1969, as amended, provides:

> "1. An officer or employee shall earn sick leave at a rate of one-half (1/2) day per bi-weekly pay period of service."

In the absence of statutory authority to the contrary, vacation and sick leave should be computed in accordance with the provisions of subdivisions 1 and 2 of section 3 and subdivision 1 of section 4 of Ordinance No. 34-1969, as amended.

Conclusion

Upon termination of service for other than cause, exempt officers and employees of the District Attorney's Office are entitled to receive payment for accumulated vacation and sick leave in the manner authorized by subdivisions 6 and 7 of Section 3 of Ordinance No. 34-1969, as amended.

Vacation and sick leave is earned in accordance with the provisions of Sections 3 and 4 of Ordinance No. 34-1969, as amended.

There are no other benefits, the payment of which would be authorized by local law or ordinance for the employees and officers in question.

John F. O'Shaughnessy
County Attorney

Thomas L. Carroll
Deputy County Attorney,
Of Counsel

TLC:hp

Committee on the Judiciary
Association of the Bar of the City of New York

--X

In Re: Judge Robert Roberto

--X

STATE OF NEW YORK)
) ss.:
COUNTY OF NASSAU)

DENIS DILLON, being duly sworn, deposes and states:

1. That I am the District Attorney of the County of Nassau and submit this affidavit in connection with an investigation being conducted by the Bar Association of the City of New York concerning the character and fitness of Judge Robert Roberto Jr.

2. The affidavit is based on a review of the files maintained in my office as well as information provided by assistant district attorneys in my employ.

3. Commencing in June 1975 and concluding in October 1976, my office investigated the facts surrounding the receipt of severance pay by fifteen assistant district attorneys who resigned their positions in December 1974. Judge Roberto was one of the individuals whose severance pay was examined.

4. The investigation focused on the record keeping procedures of the office under former District Attorney William Cahn as well as the manner, computation and certification of the severance pay received by the assistant district attorneys.

5. Judge Roberto was not a target of the grand jury inquiry nor was he ever informed by my office that he was a target of the investigation. It was requested that he execute a waiver of immunity in conection with his testimony before the grand jury, as were the other individuals who testified. Upon his refusal to waive immunity, he did testify before the grand jury receiving the automatic grant of immunity as provided in New York State.

6. The investigation did not reveal any evidence of criminal wrongdoing in connection with the severance payments and was closed out on October 21, 1976.

Denis Dillon
Denis Dillon

Sworn to before me this
13th day of May , 1988

Barbara Magliaro

BARBARA MAGLIARO
Notary Public, State of New York
No. 30-4838123
Qualified in Nassau County
Commission Expires 11-30-89

Senator LEAHY. Judge Levitt, you probably thought we would never get to you. Please step forward and raise your right hand. Do you solemnly swear that the testimony you shall give in this matter shall be the truth, the whole truth and nothing but the truth, so help you God?

Judge LEVITT. I do.

Senator LEAHY. Please be seated.

Judge, you are free to give a 2-hour opening statement if you want, but, of course, that would then be held against you.

TESTIMONY OF HOWARD E. LEVITT, MALVERNE, NY, TO BE U.S. DISTRICT JUDGE FOR THE EASTERN DISTRICT OF NEW YORK

Judge LEVITT. I'm sure it would. Thank you very much, Mr. Chairman. All I do want to say is, again, it is a privilege to be here and to have this opportunity. Thank you.

Senator LEAHY. Thank you, and again I want to welcome Ms. Levitt for being here.

From 1973 to 1978, you were a partner in a three-partner law firm with Joseph Margiotta.

Judge LEVITT. Margiotta, yes.

Senator LEAHY. Margiotta?

Judge LEVITT. Margiotta, right, yes, Mr. Chairman.

Senator LEAHY. For somebody who comes from an Italian background as I do—my mother is Italian—I am having a terrible time with Italian names today and I am glad she is not listening to the hearing.

He was chairman of the Nassau County Republican Party at that time. You were an executive committeeman on the county Republican committee headed by him. Now, during those same years—and, of course, the reason I ask the question is Mr. Margiotta involved the Republican Party in an illegal scheme and he went to prison for that.

Now, I note immediately for the record you were never charged with any misconduct in connection with that scheme, but because of your close association with him, some of the questions that we want to ask are about your knowledge of it.

Judge LEVITT. Surely.

Senator LEAHY. Can you just tell me what your understanding of the scheme was that he went to prison for?

Judge LEVITT. Well, again, Mr. Chairman, I don't know specifically what the charge was other than extortion. There was another more detailed charge. I don't know whether it was Hobbs Act or whatever it was, but in connection with the alleged extortion of monies. That was what he was found guilty of and was sentenced and went to prison.

My knowledge of anything with respect to that matter was as among other executive committeemen, having from time to time received the request to designate an individual who had a real estate license to share in insurance commissions with the individual who placed the insurance policies for the county and I believe the town.

Senator LEAHY. Well, now, he was convicted of making an illegal deal with a broker named Richard Williams. We are told that Margiotta ensured that Williams got to place the insurance policies that were needed by the municipalities in Nassau County.

Williams then agreed to divide the commissions he earned on the government business with Margiotta and certain designated Republican insurance brokers throughout the county.

Now, did you know that Williams was sharing insurance commissions with designated people around the county?

Judge LEVITT. I knew that he was sharing commissions, yes, Mr. Chairman.

Senator LEAHY. Mr. Margiotta asked you at one point to designate a suitable licensed insurance broker in your home area to receive a share of insurance commissions, did he not?

Judge LEVITT. That is correct, yes, Mr. Chairman.

Senator LEAHY. Did you think the insurance broker you designated would have to provide any significant services in order to receive his share of commissions?

Judge LEVITT. I really wasn't aware of whether he would or would not. I know the first individual I designated was our police justice, J. Francis Lynch. I never discussed anything more with him about it.

He, after being designated once, twice, three times—I don't remember how many—said designate someone else from our local community, and I did, Rick Newman, who is probably the chief real estate broker in our community of Malverne.

And I know that Mr. Newman had told me at one time that he had gone out to appraise a building or buildings and done a schematic, et cetera, something of that sort, but to what extent and what significant part that played, I have no knowledge.

Senator LEAHY. Now, basically these commissions were basically patronage?

Judge LEVITT. Yes. Oh, definitely, I would consider them patronage.

Senator LEAHY. Were you aware that Mr. Margiotta himself was sharing in these commissions?

Judge LEVITT. I understand that in one incident, he did. I hadn't been aware that there had been any pattern of incidents. I understand there was one incident that he did, yes.

Senator LEAHY. Do you know how they were generated, how the commissions were generated?

Judge LEVITT. No, I don't, Mr. Chairman.

Senator LEAHY. Were you aware that Williams placed the insurance policies on all or at least a very large number of government-owned properties in Nassau County?

Judge LEVITT. I became aware when it was written up in the papers. Until that time, I hadn't been aware specifically, you know, what the nature of the policies was or on what properties.

Senator LEAHY. Prior to seeing it in the paper, what did you think was his insurance business? What did you think was the extent of it?

Judge LEVITT. I really didn't know too much about it, Mr. Chairman.

Senator LEAHY. What about the government-owned properties?

Judge LEVITT. Well, his father, the present—Mr. Williams' father was the Republican leader of Garden City, which probably is the preeminent Republican area in Nassau County, and he himself was a very strong leader, a very important one in party matters. His voice held a great deal of weight.

He had been, I believe, the Republican leader there for many, many years through many leaderships and was very highly respected, and I assume that it went from father to son by the aegis of the father because the father, Mr. Williams, Sr., became seriously ill and, of course, eventually passed away.

Senator LEAHY. Well, were you aware that Mr. Margiotta had a say in who placed the insurance on the government's property?

Judge LEVITT. Had a say?

Senator LEAHY. Yes.

Judge LEVITT. I wasn't aware when, but I would assume that he had a voice in making the request, and obviously it had to be a considerable one.

Senator LEAHY. So you knew that Mr. Williams placed insurance on the government-owned properties there in Nassau County?

Judge LEVITT. I did become aware.

Senator LEAHY. And you knew that Mr. Margiotta had a say in who placed the insurance policies on government-owned properties?

Judge LEVITT. Yes.

Senator LEAHY. And you knew that Mr. Williams distributed portions of the commissions he earned to people that were designated to him?

Judge LEVITT. That is correct, yes, Mr. Chairman.

Senator LEAHY. What you did not know, if I understand it correctly, was that Mr. Margiotta effectively said to Mr. Williams, if you do not share your commissions with me and the people I designate, you are not going to get that government business, is that correct?

Judge LEVITT. I certainly did not know that; that is correct, Mr. Chairman.

Senator LEAHY. You did not know anything about the entire insurance commissions scheme?

Judge LEVITT. No.

Senator LEAHY. And I understand some of this, the staff had discussed with you before, anyway?

Judge LEVITT. Yes, Mr. Chairman, they did.

Senator LEAHY. And I am sure you expected we probably would.

Judge LEVITT. Yes, of course.

Senator LEAHY. Now, you were an executive committeeman for the county Republican party even before you became Mr. Margiotta's partner, is that correct?

Judge LEVITT. That is correct, yes.

Senator LEAHY. You were also town attorney for the town of Hempstead in New York?

Judge LEVITT. Yes.

Senator LEAHY. Now, during that tenure, the town and county Republican party organizations were involved in another scheme that was recently ruled to be improper. I should note for the record you were named as a defendant in the civil suit that challenged the scheme, but that you, along with the other individual defendants, were ultimately dismissed from the suit, is that correct?

Judge LEVITT. Yes, voluntarily dismissed both individually and in my capacity as treasurer, in which capacity I was sued.

Senator LEAHY. But liability was found against the party itself, is that correct?

Judge LEVITT. Yes, it was.

Senator LEAHY. I mean by the party, the political party.

Judge LEVITT. Yes, the political party.

Senator LEAHY. Now, the court found, going from my notes here, and correct me if I am wrong—the court found that town and county employees in Nassau County were coerced to contribute one percent of their annual salaries to the Republican Party's coffers, and under the scheme party officials maintained lists of all public employees and how much each had contributed to the party.

Supervisory personnel in the town and county governments were asked to ride herd on their employees to ensure that contributions were made, and some even consulted the contribution rosters when deciding who should receive promotions.

Is that basically——

Judge LEVITT. Those were the allegations, yes, Mr. Chairman, right.

Senator LEAHY. Well, that is what the court found.

Judge LEVITT. What the court found, yes, yes.

Senator LEAHY. I mean, it went beyond just the allegations; that is what they found.

Judge LEVITT. Well, they did find that, yes, Mr. Chairman.

Senator LEAHY. Now, in your role as party committeeman, were you involved in fund-raising activities?

Judge LEVITT. Yes. I was involved in fund-raising as far as my local community Malverne was concerned as my executive area, although actually it was Malverne-Lakeview, which was an unincorporated area where I also had election districts in my executive area.

Senator LEAHY. Now, tell me what that amounted to, the kind of fund-raising you did.

Judge LEVITT. Surely. Through the club——

Senator LEAHY. This is usually where all the other Senators come in to take notes because Senators are sometimes involved in fund-raising, but go ahead and tell me what you did.

Judge LEVITT. Definitely, I know it makes headlines in the paper all the time in all its various aspects. That is why I hope one day it will be public funding of——

Senator LEAHY. I agree, I agree. You are preaching to the choir on that one, but tell me what you did.

Judge LEVITT. Surely, all right. We had Republican clubs. At that time, there was a men's Republican club, a women's Republican club and, by the way, not to separate the women from the men for any purpose, but the women in Malverne who were active in Republican affairs wanted their own club.

I had always tried to join the two because if you brought elected officials down, they would have to go to one club and then another rather than one meeting, and also a club in Lakeview which was added to my area.

Senator LEAHY. I see.

Judge **Levitt**. I would, through the members of the club and through the committeemen, the elected committeemen in the different districts, ask to sponsor different events. There were a lot of social events that took place. We had cocktail parties, we had golf outings, we had a night at the races, so many.

And I would ask them to buy tickets, sell tickets to people they knew, and see if we could make that particular event a success. And also at election time, I would send out a village-wide letter to everybody, be they Republican, Democratic, conservative, liberal, whatever, and ask for contributions from the people in Malverne.

It served two purposes; one, to let them know that there was a Republican organization even if they weren't Republicans and, number two, of course, to raise monies.

Senator **Leahy**. Now, the party maintained lists of town and county employees, as we have talked about before, and how much they had contributed to the party. Were you aware of those lists?

Judge **Levitt**. Yes. There were lists from time to time that I would receive at a meeting of the executive committee when it met.

Senator **Leahy**. Did you ever consult those lists to aid your own fund-raising?

Judge **Levitt**. Very frankly, no, Mr. Chairman, and the reason I didn't was, well, two-fold. Number one, I didn't think it was necessary. I've been successful in fund-raising through the areas that I referred to. In addition, I had a number of personal friends who were very kind and who supported the activities that I was espousing in my community.

So I didn't feel the necessity of going and asking anybody merely because they worked for the town or the county for funds.

Senator **Leahy**. Well, were you aware that Mr. Margiotta had consulted these lists?

Judge **Levitt**. Had consulted——

Senator **Leahy**. These lists, or used these lists.

Judge **Levitt**. Well, he never, you know, said anything to me that, you know, he consulted them and why didn't I get a contribution from particular individuals.

Senator **Leahy**. But were you aware that he was using those lists to get money?

Judge **Levitt**. Not specifically. I know they were available and I'm sure, you know, that he knew that they were available, but I didn't know of any means by which he would, certainly as far as my community was concerned, use those lists, and I don't believe he ever did as far as my community was concerned. But he had——

Senator **Leahy**. But he did use the lists, though.

Judge **Levitt**. Well, again, I'm sure he had——

Senator **Leahy**. I mean, he got prosecuted for it.

Judge **Levitt**. Yes.

Senator **Leahy**. Well, maybe another way of putting it, Judge, is did that come as a terrible surprise to you when he got prosecuted for using these lists?

Judge **Levitt**. Well, again, the only way I could say it is in how. The fact that there are lists, I knew of, but it did come as a surprise in the sense that there would have been any coercion utilized by him with those lists.

Senator Leahy. Well, let me be very specific on this.

Judge Levitt. Sure.

Senator Leahy. This is extremely important to me. Were you aware through gossip, through discussions or anything else, that either he or anybody else was using these lists to very specifically say you give back 1 percent or 2 percent or half of 1 percent, or whatever of your salary to the party?

Judge Levitt. No. I would say I wasn't aware that he would do it just as you indicated, Mr. Chairman, "you contribute." I didn't have anybody from my community who would come to me and say, or complain or say that they were compelled or forced.

Senator Leahy. Well, then, why did they have the lists? I mean, did you not question why they even had the lists?

Judge Levitt. Oh, I would assume he had the lists to know who would be giving monies and if he were asked for a recommendation, I would assume that he would consider that, yes, yes.

Senator Leahy. As I recall the articles in the paper at the time this all happened, there were not an awful lot of people too surprised that this was the way the operation went. Am I correct in that?

Judge Levitt. I would assume so, yes, Mr. Chairman.

Senator Leahy. What?

Judge Levitt. I would assume yes, that when you say——

Senator Leahy. Certainly, the employees were not surprised.

Judge Levitt. Apparently not.

Senator Leahy. Were you?

Judge Levitt. Well, again, surprised that—surprised, yes. I would say surprised, and again I emphasize surprised that there was any specific coercion. The reason I say that is we had many meetings of our executive committee. At no point did I know Mr. Margiotta to get up and say, now, we want to collect monies from individuals and we want our 1 percent, et cetera, and so forth, and go out and solicit.

As town attorney, I was never told go out and solicit monies from your staff, your town attorneys, deputies, et cetera.

Senator Leahy. Well, when you made promotions on any of them, did you consult the lists to see whether they were good givers or not?

Judge Levitt. No, I did not, no. As a matter of fact, what I had tried to do in the office—I became the town attorney in 1967. At that time, morale was fairly low in the office as far as the attorneys were concerned.

They felt from past experience that they weren't treated much better than they felt clerks in the different divisions, and I wanted to up their scale because I thought that they were just not really shown proper consideration.

And so I did submit budgets for everybody, regardless of anything other than the merits of their work.

Senator Leahy. Did you ever ask anybody, though—did you ever ask one of your employees whether they contributed their 1 percent to the party?

Judge Levitt. I knew—I'll say this, Mr. Chairman. When I first became the town attorney—and it was, I suppose, around the time when a finance request letter was sent to everybody—the attorneys in the office volunteered to give me their checks and I said to them, don't give me the checks; this is not for me to do and this isn't the place to do it. And they did not, and after that I never heard anymore, nor knew what they were giving.

As a matter of fact, there were times when I didn't give 1 percent; there were times when I did; there were times when I would give more.

Senator LEAHY. But did you ever say to an employee, you have not given your 1 percent or you should give your 1 percent, or where is your 1 percent?

Judge LEVITT. Not that I know of, Mr. Chairman, no. It is not my nature to——

Senator LEAHY. You never asked a subordinate of yours whether they had contributed their 1 percent?

Judge LEVITT. I don't believe I ever did.

Senator LEAHY. The reason I asked is we have a copy of a claim filed in court in the so-called 1-percent case in New York by a man named George Schneider, who was the deputy town attorney in Hempstead for a portion of the time you were town attorney.

Judge LEVITT. Right.

Senator LEAHY. I will be glad to give you a copy of the claim if you would like; in fact, somebody is just bringing it down.

[The claim follows:]

RECEIVED

MAR 3 10 57 AM '88

CLERK
U.S. DISTRICT COURT
LONG [illegible]
ENT'D

EMPLOYEES OF
THE TOWN OF HEMPSTEAD

Claim Form I

REFUND OF CONTRIBUTIONS TO NASSAU COUNTY REPUBLICAN COMMITTEE and TOWN OF HEMPSTEAD REPUBLICAN COMMITTEE

Name: GEORGE B. SCHNEIDER

Current Address: 189 Atlantic Avenue
HEMPSTEAD, NEW YORK 11550

Current Telephone: (516) 538-1840

Social Security No.: 060-14-4929

1. I have received and read a copy of the Notice of Pendency of Class Action and Rights of Class-Members.

2. I wish to receive a refund of some or all of the money that I contributed to the Nassau County Republican Committee and/or the Town of Hempstead Republican Committee during 1973, 1974 and 1975. I understand that, if I qualify for a refund, I am entitled to a refund of three dollars for every dollar I contributed, plus interest.

3. PLEASE ANSWSER EITHER 3A, 3B OR 3C.

* 3A. My records indicate that I contributed $ 210.00 in 1973; $ 225.00 (225.00) in 1974; and $ 245.00 in 1975.

OR

3B. I do not know the amounts that I contributed, but it was about 1 percent of my salary in each year.

* SEE COPIES OF CANCELLED CHECKS FOR 1973 AND 1974, RESPECTIVELY, WHICH ARE ANNEXED HERETO AND MADE A PART HEREOF.

39

OR

3C. I have no recollection of how much I gave to the Republican Party from 1973 through 1975. I direct Burt Neuborne to ascertain the amount, if possible, and to file a claim for its refund.

4. I made the contributions described in Question 3A, 3B or 3C because I believed that, if I failed to contribute, it would hurt my chances of receiving raises, promotions, overtime and other employment benefits.

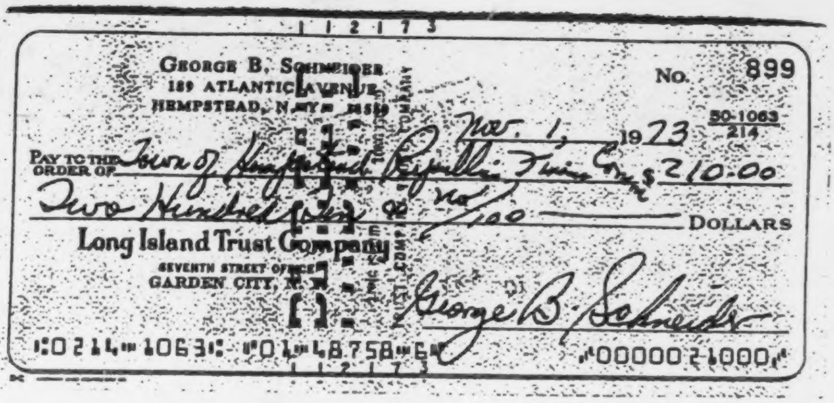
5. I held the following jobs with the Town of Hempstead during the period from January 1, 1973 through December 31, 1975:

Year	Name of Department	Job Title	Approximate Salary
1973	TOWN ATTORNEY	DEPUTY TOWN ATTORNEY	21,000.00
1974	DITTO	DITTO	22,500.00
1975	DITTO	DITTO	24,500.00

5. I understand that the defendants may challenge the amount of my claim for a refund, or may claim that my contribution was not motivated by a belief that contributions were related to raises and promotions. If such a challenge is filed, I understand that the Court will rule on my eligibility for a refund and the precise amount of any refund after a hearing. At the hearing, I may be represented by counsel of my choosing, or by Burt Neuborne, as counsel for the class. There is no charge for Mr. Neuborne's services.

Date: 3-1-88

George B. Schneider
(Signature)



GEORGE B. SCHNEIDER
189 ATLANTIC AVENUE
HEMPSTEAD, N.Y. 11550

No. 899

Nov. 1, 1973

50-1063
214

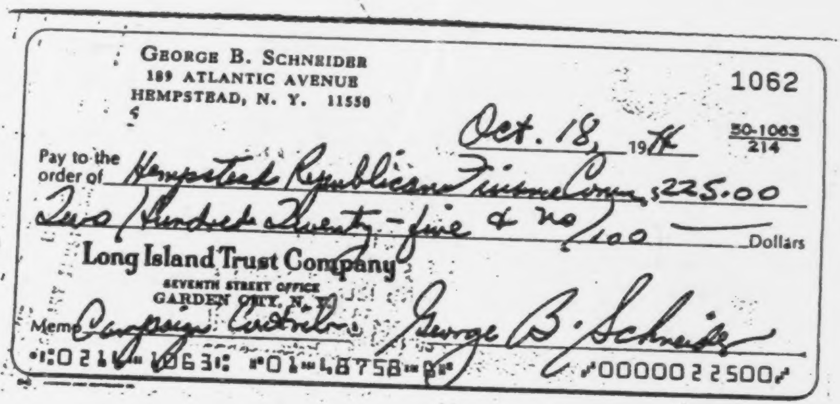
PAY TO THE ORDER OF Town of Hempstead Republican Finance Com $210.00

Two Hundred ten & no/100 DOLLARS

Long Island Trust Company
SEVENTH STREET OFFICE
GARDEN CITY, N.Y.

George B. Schneider

⑆0214⑈1063⑆ ⑈01⑈48758⑈6⑈ ⑈0000021000⑈



GEORGE B. SCHNEIDER
189 ATLANTIC AVENUE
HEMPSTEAD, N. Y. 11550

1062

Oct. 18, 1974

50-1063
214

Pay to the order of Hempstead Republican Finance Comm $225.00

Two Hundred Twenty-five & no/100 Dollars

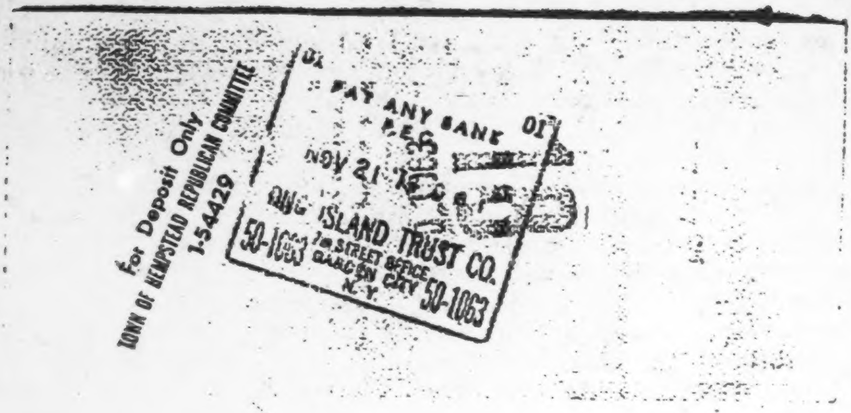
Long Island Trust Company
SEVENTH STREET OFFICE
GARDEN CITY, N.Y.

Memo Campaign Contrib.

George B. Schneider

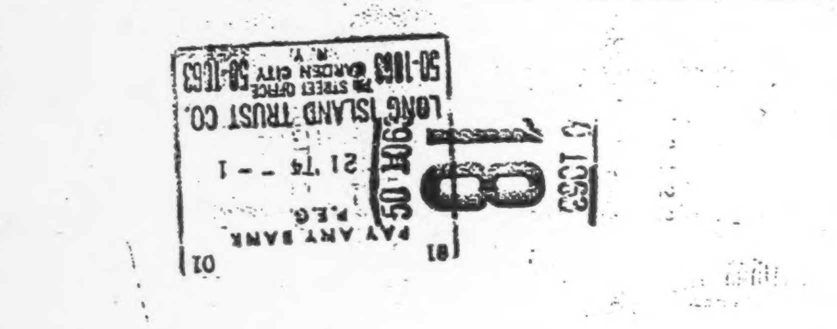
⑆0214⑈1063⑆ ⑈01⑈48758⑈6⑈ ⑈0000022500⑈

THERE WAS MY CHECK NO. 1196, DATED 10-7-75, DRAWN AGAINST LONG ISLAND TRUST CO. IN THE AMOUNT OF 245.00 WHICH WAS PAID TO THE TOWN OF HEMPSTEAD REPUBLICAN FINANCE COMMITTEE. THIS INFORMATION WAS OBTAINED FROM MY RECORDS. HOWEVER, I NO LONGER



For Deposit Only
TOWN OF HEMPSTEAD REPUBLICAN COMMITTEE
1-54429

01 PAY ANY BANK 01
P.E.G.
NOV 21 '74
LONG ISLAND TRUST CO.
50-1063 7th STREET OFFICE GARDEN CITY N.Y. 50-1063



18 PAY ANY BANK 01
P.E.G.
21 '74 - - 1
LONG ISLAND TRUST CO.
50-1063 7th STREET OFFICE GARDEN CITY N.Y. 50-1063
50 1063
18
0 1353

Senator **Leahy**. In the claim, Mr. Schneider states that he made contributions to the Republican Party during the time he was employed by the town, quote, "because I believed that if I failed to contribute, it would hurt my chances of receiving raises, promotions, overtime, and other employee benefits."

Did you ever ask Mr. Schneider whether he contributed 1 percent?

Judge **Levitt**. No, Mr. Chairman. In fact, I know Mr. Schneider well and have a great respect for him. He was an employee of the town long before I ever came there as town attorney and he was a good employee while he was there.

Senator **Leahy**. Now, were you aware of any other supervisory personnel or anybody working under you who was going out soliciting these kinds of contributions?

Judge **Levitt**. No, Mr. Chairman, I was not.

Senator **Leahy**. I think I should note, Judge, that in coming in here——

Judge **Levitt**. By the way, Mr. Chairman, I might want to point out one thing here.

Senator **Leahy**. Sure.

Judge **Levitt**. I see he says that "my records indicated that I contributed $210 in 1973." I was no longer the town attorney. I left at the end of January of 1973. And then he says in 1974, and he mentions a figure in 1975. None of those years did I have any office in the town.

Senator **Leahy**. I see.

Judge **Levitt**. I think it should be noted for the record.

Senator **Leahy**. I should note for you and your friends and anybody covering this that, you know, we have a 45-minute or 1-hour hearing like this. You have answered a lot of questionnaires already, you have met with the staff and everything else.

I usually try to emphasize at one point or another that I would hope that we spend 45 minutes in just going into these very specific questions; that we are not putting aside your career both as town attorney and as a judge or anything else and saying what about Mr. Margiotta, you know, and I do not want to leave that impression.

I am asking these questions because these are the ones that obviously have been raised. These are the ones that only you can answer.

Judge **Levitt**. Surely.

Senator **Leahy**. And I do not want to detract from your record as a judge and the record that got you the nomination in the first place.

Judge **Levitt**. I thank you, Mr. Chairman.

Senator **Leahy**. But as is the same with the other two nominees here today and the dozens and dozens and dozens—I can give the Justice Department the whole number—of the prior nominees here, we have to ask these questions.

Judge **Levitt**. I understand.

Senator **Leahy**. You will, of course, if you go on the Federal bench—I am sure you have no question in your mind that much of the kind of partisan political life that you would have been able to have before is pretty well precluded as a judge.

Judge **Levitt**. Absolutely, yes, and it has been for the 10 years that I've been on the bench.

Senator **Leahy**. I suspect. Well, thank you very much. There may be other questions for the record. I appreciate you being here.

Judge **Levitt**. Thank you again, Mr. Chairman, and I'd like to thank your staff, too.

Senator **Leahy**. They are good people.

Judge **Levitt**. They indeed are.

Senator **Leahy**. Thank you.

We stand in recess.

[Whereupon, at 4:14 p.m., the committee was adjourned.]

SUPREME COURT OF THE STATE OF NEW YORK
JUSTICES' CHAMBERS
MINEOLA, N. Y. 11501

HOWARD E. LEVITT
JUSTICE

April 22, 1988

Sen. Joseph R. Biden, Chairman
Committee on the Judiciary
U. S. Senate
Russell Office Building
Washington D.C. 20510-0801

Dear Senator Biden,

I am herein enclosing the questions propounded to me in writing at the conclusion of the hearing by the Judiciary Committee on April 21, 1988 together with my answers thereto.

Respectfully,

Howard E. Levitt

QUESTIONS FOR JUDGE HOWARD E. LEVITT, OF NEW YORK, TO BE UNITED STATES DISTRICT JUDGE FOR THE EASTERN DISTRICT OF NEW YORK

QUESTION 1 Judge Levitt, do you feel that a District Court Judge should assume direct control over complex issues and cases in order to avoid delays and to effectively manage such cases?

ANSWER: In my opinion it is very important for a Judge to maintain a "hands on" approach to complex case management for the benefit of all parties. Personal attention by a Judge results in full familiarity with the matter thereby effectuating prompt and informed issue resolution.

QUESTION 2 Judge Levitt, there is frequently a conflict between deeply-felt constitutional views of a Federal Judge and the constraints of judicial precedent. How would you resolve the tension between personal jurispurdence and precedent?

ANSWER: Although Stare Decisis, the doctrine in which the courts stand by precedent and do not disturb points of law which have already been decided is the cornerstone of our country's legal system, a Federal District Court Judge should strike a balance in his decision making process between what has been decided in the past (precedent) and his own deeply felt constitutional views. When such "tension" arises the balancing should be done by following a policy of judicial restraint through compliance with the earlier decisions (from which long standing rights and obligations may emanate) while succinctly setting forth the basis which forms the conflict for potential appellate review.

SUPREME COURT OF THE STATE OF NEW YORK
JUSTICES' CHAMBERS
MINEOLA, N. Y. 11501

HOWARD E. LEVITT
JUSTICE

May 25, 1988

Personal &
Unofficial

Honorable Patrick Leahy
Judiciary Committee
Dirksen Senate Office Building
Washington, D.C. 20510

Dear Senator Leahy,

I am enclosing herein my responses to the questions submitted by the Committee on the Judiciary pursuant to your letter of May 11, 1988.

Sincerely,

Howard E. Levitt

QUESTION #1:

You have previously provided to the Committee staff the names of several persons employed by the Office of the Town Attorney of the Town of Hempstead during the period when you were Town Attorney. Please provide the names of any others who worked in that office in any capacity during the time when you were Town Attorney.

ANSWER:

The following is a list of persons employed by the Office of Town Attorney of the Town of Hempstead during the period when I was Town Attorney. Since I did not retain any records after leaving as Town Attorney, I have compiled the list from my recollection and that of John O'Shaughnessy who was my Chief Deputy Town Attorney.

George Marthen
John O'Shaughnessy
Kenneth Chave
John Capilli
Joel Kaplan
Sam Benson
George Schneider
Joseph Proctor
Arthur Levine
Jeffrey Stadler
Joseph Cairo
Robert Foley
Al Leone
Carson Mascoll
Harriet Norris
Alan Berman
Ronald Levinson
Daniel McCarthy
Raymond Harrington
David Cartenuto
William Gaylord
Abe Lerner
Robert Williams
Matthew DeGregorio
Daniel Kikkert
Emil Scheuing
Russell Croake
Gladys Clark
Alice Mullen
Lucille Taylor
Virginia Lane
Dorothy Dreyer
Grace Pertile
Joan Berman

QUESTION #2:

During your tenure as Town Attorney, were you or (to your knowledge) any member of your staff ever asked by an officer or employee of the Nassau County Republican Committee or the Town of Hempstead Republican Committee (the "Committees") whether any employee of your office who was under consideration for a raise, promotion or other favorable consideration had made a contribution to either of the Committees. If so, please describe the circumstances of each such inquiry, including the identity of all persons present when such inqury was made.

ANSWER:

To the best of my recollection, having entered the office of Town Attorney over 20 years ago and having left it over 15 years ago I was not asked, nor was any member of my staff, during my tenure as Town Attorney, asked by an officer or employee of the Nassau County or Town of Hempstead Republican Committees whether any employee of my office who was under consideration for a raise, promotion or other favorable consideration had made a contribution to either of the Committees.

QUESTION #3:

Please describe in full what you knew during your tenure as Town Attorney regarding the practice of soliciting contributions to the Committees from employees of the Town of Hempstead.

ANSWER:

When I became Town Attorney in 1967, I heard from those employees of the Town with whom I came in contact that it was customary to give a campaign contribution in an amount approximating one percent of salary. I was never directed by an officer or employee of a Republican Committee to make such a contribution, or, in fact, any contribution. The talk around Town Hall was that this was a custom in practice for decades. Those employees in the Executive Offices, including the Office of Town Attorney were, in the main, Committeemen and women in the Republican Party or active members of Republican Clubs. Edward Speno was the Nassau County Republican Chairman when I was appointed Town Attorney. He did not make, as a condition to my appointment, a requirement that I make any contribution or require others to do so. When Edward Speno resigned as chairman he was succeeded by Joseph Margiotta. He did not make any requirement of me with respect to my own or others contributions to a Republican Committee. I knew that employees customarily made contributions, but I did not know of any practice to solicit contributions.

QUESTION #4:

Please describe in full what you knew during your tenure as Town Attorney regarding the practice or procedure in which the Committees were consulted regarding potential raises or promotions for employees of the Town of Hempstead.

ANSWER:

I would be happy to describe in full my knowledge of a practice or procedure, but in fact I did not know of any practice or procedure in which the committees were consulted regarding potential raises or promotions for employees of the Town of Hempstead

QUESTION #5:

When you were Town Attorney, what was your own role in making decisions about raises or promotions for employees who worked in your office? Please provide the names of all others who were involved in the process of making those decisions. Also, when you were Town Attorney, did you ever recommend an employee for a raise or promotion in your office, only to be told later that the person would not receive the raise or promotion? If so, please describe the circumstances.

ANSWER:

Raises or promotions were decided upon by my Chief Deputy Town Attorney, John O'Shaughnessy, and myself. They were done by category, i.e. Assistant Town Attorney, Deputy Town Attorney, Chief Deputy Town Attorney and Town Attorney. The budget was then forwarded to the office of the Town Comptroller.

To the best of my recollection, I did not recommend an employee for a raise or promotion only to be told later that such person would not receive the raise or promotion.

I, Howard E. Levitt, do swear that the information provided herein is, to the best of my knowlege, true and accurate.

May 25, 1988

HOWARD E. LEVITT

Lawrence S. Farbman

NOTARY

LAWRENCE S. FARBMAN
Notary Public, State of New York
No. 30-4611051
Qualified in Nassau County
Commission Expires April 30, 19[illegible]

STUART A. SUMMIT

Birth:	April 18, 1936	Canton, Ohio
Legal Residence:	New York	
Marital Status:	Separated	Mary Joan Johnson Summit 2 children
Education:	1953 - 1959	Ohio State University B.S. degree 1957 J.D. degree 1959
Bar:	1960 1961	Ohio New York
Military Service:	1959 - 1962	Mudge, Rose, Guthrie, Alexander & Ferdon Associate
	1962 - 1963	Law Secretary to Justice Breitel Supreme Court State of New York
	1962 - 1967	Mudge, Rose, Guthrie & Alexander Associate
	1967 - 1977	Miller & Summit Partner
	1966 - 1977	New York City Mayor's Committee on the Judiciary Executive Secretary (part-time)
	1977 - present	Summit, Rovins & Feldesman Partner
	1978 - present	New York State Commission on Judicial Nomination Counsel (part-time)
Office:	445 Park AVenue New York, New York 10022 212 702-2211	
Home:	1000 Park Avenue Apartment 12B New York, New York 10028 212 861-4004	

To be United States Circuit Judge for the Second Circuit

UNITED STATES SENATE

COMMITTEE ON THE JUDICIARY

Questionnaire for Judicial Nominees

I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. **Full name (include any former names used.)**

   Stuart A. Summit

2. **Address: List current place of residence and office address(es).**

   Residence

   1000 Park Avenue
   Apartment 12B
   New York, New York 10028
   [212] 861-4004

   Office

   Summit Rovins & Feldesman
   445 Park Avenue
   New York, New York 10022
   [212] 702-2211

3. **Date and place of birth.**

   April 18, 1936
   Canton, Ohio

4. **Marital Status (include maiden name of wife or husband's name). List spouse's occupation, employer's name and business address(es).**

   Divorced

5. **Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.**

	Dates Attended		
Name/Address of School	From	To	Degree
The Ohio State University 190 N. Oval Mall Drive Columbus, Ohio 43210	1953	1959	Juris Doctor, Summa Cum Laude (1959) Bachelor of Science, Business Admin. (1957)

6. **Employment Record: List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including farms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.**

From	To	Name/Address	Position
9/59	8/62	Mudge Rose Guthrie Alexander & Ferdon (then Mudge Stern Baldwin & Todd) (address as below)	Associate Lawyer
9/62	8/63	Supreme Court, State of New York Appellate Division, First Department 27 Madison Avenue New York, New York	Law Secretary Justice Breitel
9/63	1/67	Mudge Rose Guthrie Alexander & Ferdon (then Mudge Stern Baldwin & Todd) 180 Maiden Lane (current address) New York, New York 20 Broad Street (former address) New York, New York	Associate Lawyer Litigation
1/67	1/77	Miller & Summit 90 Broad Street (4/67-12/76) New York, New York 40 Wall Street (1/67- 4/67) New York, New York	Partner General and Litigation
1966	1977	New York City Mayor's Committee on the Judiciary 42 West 44th Street New York, New York	Executive Secretary (Part-time)
1/77	Date	Summit Rovins & Feldesman 445 Park Avenue New York, New York 10022	Partner/Head of Litigation Department
1978	Date	New York State Commission on Judicial Nomination 230 Park Avenue New York, New York	Counsel (Part-time)
1975*	Date	Keystone Camera Products Corp. 468 Getty AVenue Clifton, NJ	Director
1986	Date	Ichor Technology, Inc. 6537 Main Street Trumbull, CT	Director

---

* approximately

7. **Military Service: Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.**

No.

8. **Honors and Awards: List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.**

Ohio State University (Undergraduate)
  Phi Eta Sigma (Freshman Scholastic Honorary)
  Romophos (Sophomore Leadership Honorary)
  Bucket & Dipper (Junior Leadership Honorary)
  Junior Class President
  Sphinx (Senior Leadership Honorary)

Ohio State University (College of Law)
  Chief Justice, Student Court
  First Vice President, Student Bar Association
  Order of the Coif (Scholastic Honorary)

President, Ohio State Law Alumni (1979)

Chairman, Ohio State Alumni Advisory Council (1986-Present)

Trustee, Ohio State University Development Fund (1984-1986)

Boys Clubs of America
  Trustee
  Vice Chairman, Constitutional Commission
  National Associate of the Year, 1986

Chairman or Co-Chairman of many Practicing Law Institute seminars on the subject of corporate litigation

9. **Bar Associations: List all bar associations, legal or judicial-related committees or conferences of which you are or have been a member and give the titles and dates of any offices which you have held in such groups.**

American Bar Association: Sections on Litigation; Corporation Banking and Business Law; Antitrust Law.

New York State Bar Association

Association of the Bar of the City of New York: Arbitration & Alternative Dispute Resolution Committee (1985 to date); Committee on Judicial Selection and Tenure (1971-1975); Committee on State Courts of Superior Jurisdiction (1976-1978); Committee on Federal Courts (1979-1982).

American Judicature Society

Federal Bar Council [Had responsibility for several years for the Council's alternative dispute resolution program.]

10. Other Memberships:

List all organizations to which you belong
that are active in lobbying before public bodies.

I do not belong to any organization that, to my knowledge, lobbies before public bodies.

Please list all other organizations to which you belong.

Boys Clubs of America (Trustee)

Freedoms Foundation

Federalist Society

New York City Partnership

The Ohio State University
  Ohio State University Development Fund
  National Council of the College of Law
  President's Club

Southampton Bath and Tennis Club

Confrerie De La Chaine Des Rotisseurs

11. Court Admission: List all courts in which you have been admitted to practice, with dates of admission and lapses if any such memberships lapsed. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.

All courts, State of Ohio, admitted April 29, 1960.
All courts, State of New York, admitted June 1961.
United States Supreme Court, admitted November 5, 1973.
United States Court of Appeals for the Second Circuit, admitted May 31, 1966.
United States Court of Appeals for the Sixth Circuit, admitted October 3, 1966.
United States Court of Appeals for the Fifth Circuit, admitted March 22, 1974.
United States District Court, Southern District of New York, admitted December 23, 1965.
United States District Court, Eastern District of New York, exact date of admission unknown; probably December 1965.

12. Published Writings: List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy.

If there were press reports about the speech, and they are readily available to you, please supply them.

1. Litigation, Vol. 1, No. 2, Spring, 1975, The Journal of the Section of Litigation, entitled "Conducting the Oral Deposition." This article has been republished in other legal periodicals and is extensively relied upon in James C. Freund's book, Lawyering.

2. Litigation, Vol. 3, No. 2, Winter, 1977, The Journal of the Section of Litigation, entitled "The Witness Needs Help." This article, too, has been relied upon by others for instruction on the topic of preparing deposition witnesses.

3. New York Law Journal, December 10, 1986, entitled "The Insider-Trading Panic Overlooked Element of Scienter," co-written with Ronald E. DePetris of this firm.

4. National Law Journal, December 24, 1984, entitled "Using Rule 9(b) to Challenge Securities-Fraud Actions," co-written with Bernice K. Leber of this firm.

5. National Law Journal, April 30, 1984, entitled "An Innovative Approach To Resolving Disputes -- But Will It Ever Succeed?," co-written with Erwin Cherovsky of this firm.

6. I have edited or co-edited a series of handbooks prepared for the Practicing Law Institute seminars I have chaired. Portions of these handbooks are my own work, as well. Samples of these handbooks are being supplied with this questionnaire.

7. The only speech I recall on an issue that might be described as legal policy is one given in March, 1974 at the American Judicature Society National Conference on Judicial Selection and Tenure. The text of that speech, entitled "Criteria for Judicial Selection -- Do They Advance the Search For Judicial Quality," is being supplied herewith. There was no press report of that speech.

13. **Health: What is the present state of your health?**

Very Good.

List the date of your last physical examination.

September 3, 1987

14. **Judicial Office: State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.**

None.

15. **Citations:** If you are or have been a judge, provide citations for: (1) the ten most significant opinions you have written; (2) a short summary of all appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings; and (3) significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions.

Not applicable

16. **Public Office:** State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.

I have served as Law Secretary to Justice Charles D. Breitel, then of the Supreme Court of the State of New York, Appellate Division, First Department, as Executive Secretary of the New York City Mayor's Committee on the Judiciary and as Counsel to the New York State Commission on Judicial Nomination. Details regarding those positions are supplied in the response to Question 17.

17. Legal Career:

a. Describe chronologically your law practice and experience after graduation from law school including:

   1. whether you served as clerk to a judge, and if so, the name of the judge, the court, and the dates of the period you were a clerk;

   2. whether you practiced alone, and if so, the addresses and dates;

   3. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each;

Dates		Name/Address	Position
9/59	8/62	Mudge Rose Guthrie Alexander & Ferdon (then Mudge Stern Baldwin & Todd) (address as below)	Associate Lawyer
9/62	8/63	Supreme Court, State of New York Appellate Division, First Department 27 Madison Avenue New York, New York	Law Secretary Justice Breitel
9/63	1/67	Mudge Rose Guthrie Alexander & Ferdon (then Mudge Stern Baldwin & Todd) 180 Maiden Lane (current address) New York, New York 20 Broad Street (former address) New York, New York	Associate Lawyer Litigation
1/67	1/77	Miller & Summit 90 Broad Street (4/67-12/76) New York, New York 40 Wall Street (1/67- 4/67) New York, New York	Partner General and Litigation
1966	1977	New York City Mayor's Committee on the Judiciary 42 West 44th Street New York, New York	Executive Secretary (Part-time)
1/77	Date	Summit Rovins & Feldesman 445 Park Avenue New York, New York 10022	Partner/Head of Litigation Department
1978	Date	New York State Commission on Judicial Nomination 230 Park Avenue New York, New York	Counsel (Part-time)

b. 1. What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?

1959 to 1960. During this 1-1/2 to 2-year period, I was assigned as a new associate to Milton C. Rose, one of the senior partners of Mudge Rose. I did whatever junior-level work Mr. Rose required. This work included chores for clients (preparing insurance applications and the like), corporate minutes for private businesses and charitable corporations, coordinating the work of other lawyers in the office reporting to Mr. Rose, and miscellaneous other duties.

1961 to September, 1962. At my request, I was transferred to the litigation department of Mudge Rose, and commenced the usual work of a junior associate. Research, writing memoranda of fact or law, and preliminary drafting of court papers occupied most of my time. I screened information forms from the New York Foundling Hospital with regard to accidents to their charges, and commenced litigation on behalf of those charges who appeared to have grounds for suit. The subject matter of my work otherwise was diverse, with a preponderance related to securities matters.

September, 1962 to August, 1963. I was Law Secretary to Charles D. Breitel, then an Associate Justice of the Supreme Court of the State of New York, Appellate Division, First Department. I independently researched every appeal upon which Justice Breitel sat, wrote a memorandum regarding each in which the facts and law were analyzed and a result recommended. Once Justice Breitel was assigned the case, I would assist him in the preparation of his opinion, doing such additional research and analysis as was necessary. I assisted Justice Breitel in decision of motions and all other aspects of his judicial role.

September, 1963 to December, 1967. Having returned to Mudge Rose as a litigation associate, I gradually assumed greater responsibilities. Ultimately I tried several lawsuits, was the lead lawyer at many examinations before trial, and was the principal assistant to various litigation partners on larger cases. Again, if any area of the law predominated, it was the securities law; and I worked very closely with various of the corporate partners who sought litigation advice regarding prospective securities claims. The cases upon which I worked were predominantly Federal, pending mostly in the Southern and Eastern Districts of New York, but also in other districts.

January, 1967 to December, 1976. I left Mudge Rose to co-found Miller & Summit. Initially, the firm consisted of two partners and a part-time associate. During the first approximately 3 years, my practice was very general. While I continued to actively litigate, the needs of the practice required that I also learn areas of corporate law as well. After attending a number of seminars and reading many books, I prepared S.E.C. registration statements and negotiated and did the paperwork regarding a variety of corporate transactions. Simultaneously, and thereafter, I handled a variety of litigated matters, including corporate takeover cases, antitrust matters, real estate disputes, Federal condemnation cases, product liability defense, S.E.C. investigations, and just about every other kind of case, with the exception of prosecution of personal injury claims and criminal defense. The firm ultimately grew to ten lawyers, so that during the latter portion of this period, a substantial amount of my time was spent supervising the work of others. During the last few years of Miller & Summit's existence, I did no corporate or securities transactional work, confining myself to litigation and to general counseling.

1966 to 1977. During this period, I also served as Executive Secretary of the New York City Mayor's Committee on the Judiciary. I constituted the sole professional staff of the Committee, and my duties were in the nature of counsel. During the period of my service, Mayor Lindsay served two terms and Mayor Beame one. I was chosen by the Committee, not by the Mayor. My duties were to generate, and conduct a professional investigation of, candidates for the Family and Criminal Courts, and for interim appointment to the Civil Court. There would be as many as 20 to 30 vacancies on these courts in the course of a year, with the candidates outnumbering the vacancies many times. Thus the workload was considerable, notwithstanding the part-time nature of the position. I worked very closely with Louis M. Loeb, the Chairman until his retirement in December 1971 and, thereafter, with Mendes Hershman.

January, 1977 to Date. Miller & Summit merged with Burns & Jacoby to form a firm initially named Burns Jackson Miller Summit & Jacoby. At the time of merger, the firm consisted of about 35 lawyers. I became the head of the Litigation Department, among other positions in the firm, the Department then consisting of about one-third of the firm. While assuming more supervisory responsibiity for the work of others, I continued to actively litigate. As with Miller & Summit, the litigation practice was and is extremely diverse, including most topics about which one litigates, again with the exception of the prosecution of personal injury cases and the defense of violent crime cases. While not defending "white-collar" criminal cases myself, I have, during this period, supervised or assisted others in the defense of such cases. A considerable portion of the practice has been the result of referrals from other law firms, typically out-of-City, which further diversifies the practice. While not being involved in the detail or drafting of papers in connection with corporate transactions, I continue to generally counsel businesses and occasionally to negotiate business transactions. Notwithstanding the amount of time I have spent in recent years supervising the work of others, counseling businesses, serving the N.Y. State Commission on Judicial Nomination, and being a senior partner of this firm, I have remained an active trial lawyer throughout.

1978 to Date. In mid-1978, I was selected by the New York State Commission on Judicial Nomination to be its first Counsel. The Commission was in the process of organizing itself, under the recently enacted amendment to the New York State Constitution (Art. 6, § 2(c-g), by which it was given the responsibility of nominating to the Governor persons from whom he must choose for the judges of the New York Court of Appeals. During the remainder of 1978, Professor Herbert Wechsler, the Commission's first Chairman, and I devoted most of our time to the organization of the Commission, to the preparation of its Rules of Procedure and to the elaborate process by which the Commission nominated 7 persons (as required by statute) for a vacancy in the office of Chief Judge of the State of New York. I have remained Counsel to the Commission throughout its life, assisting it in investigating and determining its nominees for all of the judges of the New York State Court of Appeals. Mendes Hershman replaced Professor Wechsler as Chairman, and I have worked closely with him ever since.

2. **Describe your typical former clients, and mention the areas, if any, in which you have specialized.**

I cannot say that any client for whom I have personal responsibility on an overall basis, or for whom I have regularly litigated, is typical.

The nature of Miller & Summit and this firm has not been such as to have a client typical by any usual definition. Our clients are a diverse group of middle-size, private, public and entrepreneurial companies.

In recent years the client for which I have had overall responsibility and which has taken more of my time than any other is Keystone Camera Products Corporation, formerly Amicor Incorporated. I have conducted unfair competition, contract and, to a limited extent, patent litigation cases for this corporation; and as a director, I am intimately involved in its affairs. In 1986, the client that occupied the largest portion of my time, if any, was the law firm of Levy Phillips & Konigsberg, in connection with the separation of the partners of that firm from the firm of Kreindler & Kreindler. One of the cases that resulted from that firm breakup ended in a seven-week jury trial in Supreme Court, New York County. Another client which occupied a great deal of my time during 1986 was R.R.I. Realty Corporation, which had substantial zoning and related litigation against the Village of Southampton, New York, and a substantial Eastern District of New York action on related facts brought under 42 U.S.C. § 1983. Virtually every year is different in terms of the clients for whom I am litigating.

I have not specialized in any specific area of litigation either. During my later years at Mudge Rose, and the life of Miller & Summit, I probably handled more securities law cases than anything else. Many of these were defenses of class actions, but I also represented plaintiffs in individual securities actions and handled a number of cases related to attempts to change the management of corporations. I have also litigated a substantial number of unfair competition cases, arising out of both New York State common law and the Federal law of unfair competition, including the Lanham Act. I have counseled and litigated regarding law firm breakups, and this could be called a specialty too. Overall, the practice has been so diverse, it is difficult to claim a specialty other than general litigation.

c. 1. Did you appear in court frequently, occasionally or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates.

During my approximately twenty-seven years as a trial lawyer, the frequency of my appearances in court has been a function purely of the cases in which I was actively involved at the time. The frequency of my court appearances has not been a result of any change in responsibilities, or the nature of the practice, or the passage of time. The nature of the practice has always required more preparation, and pre-trial (out-of-court) procedures, such as examinations before trial and motions, than actual court time.

2. What percentage of these appearances was in:
(a) federal courts;
(b) state courts of record;
(c) other courts.

I have no record of what percentage of my court appearances has been in particular courts. My best guess is that my appearances have been about equally divided between federal courts and state courts. I have appeared in federal courts in many districts throughout the U.S. and in state courts of New York and other states as well.

3. **What percentage of your litigation was:**

(a) civil;
(b) criminal.

Virtually all of the litigation with which I have been involved has been civil. I have participated in representing clients under criminal investigation, and I have worked with other lawyers in the defense of criminal cases.

4. **State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.**

In every case that I have tried for about the last twenty-two years, I have been the lead or sole counsel for the client. I do not know, and have no record of, the number of cases I have tried to verdict or judgment rather than settled. It has been the nature of my practice that most cases are settled. I have been able to recall ten evidentiary hearings or trials during the last approximately ten years, but there are more. Several of those were settled during trial.

5. What percentage of these trials was:

(a) jury;
(b) non-jury.

Most of the cases I have tried have been non-jury. I would estimate that about 20% of all of the cases I have tried were jury cases.

18. **Litigation: Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:**

(a) the date of representation;
(b) the name of the court and the name of the judge or judges before whom the case was litigated; and
(c) the individual name, address and telephone numbers of co-counsel and of principal counsel for each of the other parties.

The answer to Question 19 includes the information requested in this Question.

19. **Legal Activities: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation in the matter. (Note: as to any facts requested in this question, please omit any information protected by the attorney-client privilege.)**

The following matters are among the most significant to me of those which I have personally handled. They are probably not significant in any global sense, but do exemplify the nature and diversity of my practice over the years. As will be seen, my work often involves projects of which litigation is one part; hence, for me, questions 18 and 19 can be answered together.

1. **The Ecological Science Corporation Control Fight and S.E.C. Case.** In 1971, Miller & Summit was retained by shareholders and former officers and directors of Ecological Science Corporation, an American Stock Exchange-listed company, to assist in the removal of the management of that company and to assist in straightening out its business and legal affairs. At the time, the company was the subject of a recent S.E.C. consent decree, did not have auditors because of substantial disagreements with Haskins & Sells, had not had a shareholders' meeting for more than a year and was in general disarray. I directed an overall program involving pressure on the management at many points. We worked closely with the S.E.C. Enforcement Division, encouraged them to commence a second injunction proceeding and to seek an equitable receiver, appeared in that action as amicus curiae on the S.E.C.'s behalf in order to emphasize that the S.E.C.'s interests and those of the shareholders were consistent, defended litigation commenced against our clients by the management and encouraged the office of the U.S. Attorney for the Southern District of New York to investigate criminal aspects of the management's conduct. The equitable receivership that was imposed by District Judge John M. Cannella was among the first, and was certainly the first to be charged with the supervision of an election contest and the allocation of funds between management and insurgents for that election contest. I know of no case since, either, in which the corporate treasury was shared by the contestants. Ultimately, on the eve of the election contest, management resigned in favor of our clients. We then became general counsel to the company, and working with the receiver's counsel, who stayed in place at our suggestion, proceeded to attempt to straighten out the company's business and legal affairs. In the absence of proper prior audited financial statements, we worked out a procedure by which the receiver and the receiver's accountants, with the full cooperation of the new management, issued unaudited financial statements under court aegis that were given, by the S.E.C., equivalent status to normal audited financial statements so that the company would have a new starting point. Further substantial problems with the business of the company remained, including complex legal and business issues involving foreign subsidiaries, and litigation regarding the prior management's conduct.

There were no evidentiary hearings. District Judge Cannella's principal decision is unreported, and the Second Circuit's affirmance of the injunction and equitable receivership is at 469 F.2d 198 (1972). [While we are listed as *amicus curiae* only in those opinions, District Judge Cannella allowed us to participate as fully as parties, including the submission of fact affidavits, briefs and oral argument, and the Second Circuit permitted us to brief and argue as well.] Eventually, District Judge Inzer B. Wyatt took over the S.E.C. case, and it was settled between the new management and the S.E.C. with Judge Wyatt playing an active role therein.

The active attorneys were:

For the S.E.C.
Robert LaPrade
4850 Connecticut Avenue
Number 803W
Washington, DC 20008
[202] 966-3242

For the S.E.C.
Rodney K. Vincent
S.E.C.
1515 Arapahoe
Denver, CO 80112
[303] 844-2071

For the S.E.C. on the appeal
and active in the settlement
Theodore R. Sonde
Cole & Corette
1110 Vermont Avenue N.W.
Washington, DC 20005
[202] 872-1414

For the Management
Murray Chotiner, Deceased
Assisted by
Evan Gordon
Danziger, Bangser, Klipstein,
Goldstein, Greenwald & Weiss
230 Park Avenue
New York, NY 10169
[212] 867-6500

For Robert F. Wagner,
as Receiver
Paul Grand
Grand & Ostrow
641 Lexington Avenue
New York, NY 10022
[212] 832-3611

2. *Pearson v. Ecological Science Corporation*. This was an action commenced as a class action, in which we originally appeared for individual defendants who had previously been officers or directors of the Company. The action was based on the same securities law violations as the first S.E.C. action. After our clients took management control, we appeared for the company, successfully opposed class certification, and represented the company in pretrial proceedings as the case progressed as 16 consolidated actions with 99 shareholder-plaintiffs. The individual claims were settled, but an attack upon the settlement became the subject of an interesting decision by the District Court and the Fifth Circuit, 522 F.2d 171 (1975), *rehearing en banc* dismissed, 525 F.2d 1407 (1975), when an attempt was made to compel a post-settlement appeal of the denial of class certification. I argued the Fifth Circuit appeal for all defendants. Certiorari was dismissed or denied at two stages, 416 U.S. 952 (1974) and 425 U.S. 912 (1976).

Many lawyers were involved in this case, but the principal lawyers with whom I dealt were:

For Plaintiffs
Thomas H. Seymour
Kenny Nachwalter & Seymour
100 Chopin Plaza, Room 400
Miami, FL 33131
[305] 358-8151

For Mutual Fund Plaintiffs
Peter M. Saparoff
Gaston Snow & Ely Bartlett
One Federal Street
Boston, MA 02110
[617] 426-4600

For Defendant Haskins & Sells
Michael Cooper
Richard Lyon
Sullivan & Cromwell
125 Broad Street
New York, NY 10004
[212] 558-4000

For Certain Other Defendants
Honorable Sidney Aronovitz
U.S. District Judge
Southern District
Federal Courthouse Square
301 N. Miami Avenue
Miami, FL 33128-7788
[305] 536-4638

-and-

H. James Catlin, Jr.
Catlin, Saxon, Tuttle & Evans
Alfred I. DuPont Building
169 Flagler Street
Miami, FL 33131
[305] 371-9575

3. People v. Edmund Kidd, 15 N.Y.2d 723 (1965). While an associate at Mudge Stern, I briefed and argued this appeal in the New York Court of Appeals as assigned counsel. I had initially been asked to handle an appeal to the Appellate Division, First Department by that court because of the significance of the issues presented. My co-counsel, also by appointment of both courts, was Edward J. Bloustein, but he was named as president of a college in the middle of the Court of Appeals appeal, and I edited the Court of Appeals brief and argued it myself. Initially, the Appellate Division determined that it should not have dismissed the appeal of a 12-year old first degree murder conviction for failure to prosecute, restored the appeal and then affirmed the conviction. Thereafter, the United States Supreme Court decision in Jackson v. Denno, 378 U.S. 368 (1964), was issued, and our position to the New York Court of Appeals was that that case and other recent U.S. Supreme Court decisions required retrial under wholly new procedures. My adversary and I argued for over an hour each at the invitation of the Chief Judge, on a calendar that included nothing but criminal cases involving similar issues. The other cases then on the calendar were not argued at any length because we had covered all of the issues. The decision, which indeed substantially altered criminal trial procedure in New York, was inexplicably issued in People v. Huntley, which had been on the calendar that day but hardly argued, rather than in Kidd.

Opposing counsel:

For the Office of the
District Attorney, New York County
Richard Uviller, Professor of Law
Columbia University School of Law
435 West 116 Street
New York, NY 10027
[212] 280-2640

4. R.R.I. Realty Corp./Village of Southampton Cases. These are three cases, all involving what is said to be the largest residential construction project undertaken in the State of New York since records have been kept. The house is located in the Village of Southampton and has been the liveliest issue in that Village in recent years. The house was under construction for over two years without benefit of a building permit, and certain zoning restrictions had been violated, when it became a local political issue. The first two proceedings were in the Supreme Court, Suffolk County.

(a) R.R.I. Realty Corp. v. Romano, et al., Suffolk County Index No. 10639/84 (Lama, J.). In this, the first case, our client, R.R.I. brought an Article 78 proceeding to compel the issuance of a building permit. After a five day trial in 1984, the Court awarded R.R.I. the building permit, holding that Village officials had acted improperly in various regards.

Opposing counsel:

Anthony B. Tohill
17 First Street
Riverhead, NY 11901
[516] 727-8383

James J. Reynolds
Reynolds, Caronia & Gianelli
200 Motor Parkway
Hauppauge, NY
[516] 231-1199

(b) R.R.I. Realty Corp. v. Hattrick, et al., Suffolk County Index No. 14274/84 (Baisley, J.), aff'd, ___ A.D.2d ___ (2d Dep't 1987). In this second case, also a Supreme Court, Suffolk County Article 78 proceeding, R.R.I. sought an order compelling the issuance of a zoning variance. That petition was denied, and the denial has been affirmed.

Opposing counsel:

Anthony B. Tohill
17 First Street
Riverhead, NY 11901
[516] 727-8383

(c) R.R.I. Realty Corp. v. Village of Southampton, et al., No. 84 Civ. 3382 (Sifton, D.J.). This third case is an action under 42 U.S.C. § 1983, pending in the U.S. District Court for the Eastern District of New York, in which R.R.I. seeks damages for violations of its Constitutional rights. Successive motions to dismiss have been denied, District Judge Sifton's decisions bearing on the immunity of municipal officials, privileges attached to governmental documents and the obligation of a Federal court to abstain where two State court proceedings are pending. On an interlocutory appeal taken by the defendants, the Second Circuit has held, for the first time, that a District Court order declining abstention is not appealable. R.R.I. Realty Corp. v. Village of Southampton, 766 F.2d 63 (2d Cir. 1985).

Opposing counsel:

John McLoone
Maloney, Murphy, McLoone,
 Nelson, Dobise & McGrane
245 Hillside Avenue
Williston Park, NY 11596
[516] 294-0777

Richard C. Mulle'
Martin, Fallon & Mulle'
100 East Carver Street
Huntington, NY 11743
[516] 421-1211

James Furey
Furey & Furey
600 Front Street
Hempstead, NY 11550
[516] 538-2500

James C. Brady
Mooney, Perry & Hirschhorn
584 Front Street
Hempstead, NY 11550
[516] 481-7400

Joseph E. Farrell
Joseph E. Farrell, P.C.
1445 New York Avenue
Huntington Station, NY 11746
[516] 421-0444

5. The "Mary Roe" Cases. These cases involved an attempt by a natural mother to regain custody of an out-of-wedlock child and to prevent the adoption of that child by foster parents with whom he had been placed by the New York Foundling Hospital. Miller & Summit was retained by the foster parents after litigation had been proceeding between the natural mother and the Foundling Hospital, with mixed and inconclusive results. By precedent, our clients had no standing to participate in the pre-existing litigation, or to commence litigation in their own right. Nonetheless, we brought a separate proceeding in the Supreme Court, Westchester County (unreported), hoping to reach the New York Court of Appeals at the same time as the main litigation, in an effort to be certain that the ultimate decision took into account a balanced view of the best interests of the child, and would not be the usual decision between a warring natural mother and a large, faceless institution. Our ultimate success was not in the courts, as the cases were resolved before argued to the New York Court of Appeals. By setting forth the position of the foster parents, we were able to persuade the natural mother that her child's best interests lay in adoption. Although no legal precedent was set by our participation, and indeed, we never even had a court address our principal points, the case is one of the most gratifying I have handled. A celebratory Mass was held upon the adoption of the child, at which the attorneys for the Foundling Hospital and I were honored. The citations for the Foundling Hospital case, in which I did not formally participate, but assisted Foundling Hospital lawyers, are 33 A.D.2d 83 (1st Dep't 1969), 27 N.Y.2d 533 (1970) and 36 A.D.2d 100 (1st Dep't 1971).

The principal lawyers in the case were:

For the New York Foundling Hospital
William P. Ford
Ford Marrin Esposito & Witmeyer
120 Wall Street
New York, NY 10005
[212] 269-4900.

For the natural mother
Philip F. Solomon
(Current whereabouts unknown.)

For the natural father
Daniel R. Murdoch
Donovan, Leisure, Newton & Irvine
30 Rockefeller Plaza
New York, NY 10112
[212] 307-4100
(He did not appear in the cases, but worked closely with me.)

6. The Studebaker Control Fight Cases. These cases occurred when I was a comparatively young associate at Mudge Stern, and were part of one of the earliest modern proxy contests for a large national corporation. While many Mudge partners were involved, and Skadden Arps was advising, and while my name appears in some opinions but not others, I was the journeyman lawyer in all of the cases, and the principal draftsman, and the cases were formative for me. There were three cases:

(a) The New York shareholders list proceeding, Gittlin v. Studebaker Corporation, et al., 49 Misc.2d 964 (Sup. Ct., N.Y. Co. 1966), rev'd, 25 A.D.2d 822 (1st Dep't 1966). There was no trial. The Appellate Division did not require delivery of a list.

(b) Studebaker Corp. v. Gittlin, 360 F.2d 692 (2d Cir., 1966). In this case, Judge Friendly wrote the first decision by which a corporation was permitted to utilize Section 14(a) of the Securities Exchange Act to complain of violations of the proxy rules. It had previously been thought that the corporation did not have standing to enforce the proxy rules. The opinion was also a landmark in determining that a Federal court could enjoin the use of State courts, notwithstanding the anti-injunction statute, in order to enforce Federal securities regulations and statutes. There was no trial.

(c) Studebaker Corporation v. Allied Products Corporation, 256 F. Supp. 173 (W.D. Mich., S.D. 1966). In this case, the District Court (Noel Fox, D.J.) upheld Studebaker's claim that the defendant's proxy material was lacking, but also gave relief against Studebaker by taking control of the entire election contest. There was a several week preliminary injunction hearing in 1966, at which I assisted. Studebaker's real victory in this case was in procuring an immediate stay from the Sixth Circuit, which had the effect, given the Sixth Circuit's calendar, of putting the election contest in limbo for a long period of time.

Our principal adversary lawyers in all cases were:

Charles H. Miller
Loeb & Loeb & Hess
230 Park Avenue
New York, NY 10169
[212] 692-4800

Mark Kaplan
Skadden, Arps, Slate, Meagher & Flom
919 Third Avenue
New YOrk, NY 10022
[212] 735-3000

Other lawyers with whom I worked closely on behalf of Studebaker were:

Robert G. Stachler
Taft, Stettinius & Hollister
First National Bank Center
Fountain Square
Cincinnati, OH 45202
[513] 381-2838

William K. Van't Hof
Varnum, Riddering,
Schmidt & Howlett
171 Monroe Avenue
Grand Rapids, MI 49503
[616] 459-4186

7. The Itel Investigation. This is not a litigation, but is indicative of the diversity of my practice. We were retained in 1979 by the non-affiliated board members of Itel Corporation, a large public company based in San Francisco, to investigate the causes of that company's dramatic reversals. In less than six months, Itel had gone from a highly profitable company to a virtual bankrupt, eventually filing a Chapter 11 bankruptcy proceeding. For about eighteen months, I and a team of corporate lawyers and litigators of this firm commuted to San Francisco, conducted interviews of dozens of involved corporate officers and employees and others, worked with accountants we retained, and ultimately issued a lengthy report detailing the management failures and failures of outside accountants and counsel that led to the lack of controls and understanding of the corporation's business that permitted the apparently dramatic downturn.

We worked closely with the litigation counsel for the independent directors, who was:

Bartlett A. Jackson
Jackson, Tufts, Cole & Black
650 California Street
San Francisco, CA 94108
[415] 433-1950.

8. Cook United, Inc. v. Stockholders Protective Committee, [1979 Decisions Binder] Fed. Sec. L. Rep. (C.C.H.) ¶ 96,875 at 95,576 (2d Cir. 1979, Cannella, D.J.); aff'd without op. 614 F.2d 1286 (S.D.N.Y. 1979). This firm represented a group attempting to take over the board of directors of Cook United, Inc., a Cleveland, Ohio New York Stock Exchange-listed corporation. The case involved the effort of Cook United to enjoin the Committee's participation. After extensive discovery and an evidentiary hearing in 1979, the injunction was denied. I was one of the architects of the control fight, and supervised the drafting of the proxy material and the conduct of the election contest, as well as conducting the defense of the litigation. Our clients elected a minority of directors, but thereafter those directors came to dominate the board. Unfortunately, the company's illness turned out to be incurable, and it is now in its second bankruptcy proceeding.

Principal adversary counsel in the litigation was:

Kenneth E. Newman
Donovan, Leisure, Newton & Irvine,
30 Rockefeller Plaza
New York, NY 10112
[212] 307-4100).

9. **AT&T Information Systems, Inc. v. City of New York and Others Similarly Situated**, New York County Index No. 24630/84 (Stecher, J.). This action seeks a declaratory judgment that an effort by New York City and other taxing authorities to tax telephone equipment as if real property, only when owned by AT&T, is unconstitutional. In November, 1986, New York County Supreme Court Justice Martin B. Stecher decided cross summary judgment motions in favor of our client, AT&T Information Systems, and declared Chapter 894 of the laws of 1984 unconstitutional. The City has appealed.

Our adversary in this matter was, for The City of New York:

Judith Greenwald
Assistant Corporation Counsel
100 Church Street
New York, NY

[212] 566-4215

10. Levy, Phillips, et al. v. Kreindler et al, New York County Index No. 6771/85. This action, and other related cases, resulted from the 1985 breakup of the Kreindler & Kreindler firm, well known experts in mass tort litigation. I counseled and represented the five partners of the firm who left to form Levy, Phillips & Konigsberg. The litigations involved a variety of questions of interest to the legal profession, including ethical ones such as the enforceability of a partnership agreement provision permitting the senior partner to allocate fees earned by departing partners who have been retained by former firm clients. One aspect of this case, whether or not the written partnership agreement had been abandoned, resulted in a 7 week jury trial, in Spring 1986. All of the disputes between our clients and the remaining Kreindler partners were settled the evening before the jury was to be charged. [The case continues between our clients and two other partners who had previously departed the Kreindler firm, but I have not been involved in the case since the settlement.] New York County Supreme Court Justice Michael J. Dontzin had the case, and has the residual portions, for all purposes.

Our adversaries were, for Kreindler & Kreindler:

William Marshall Morgan
Morgan, Wenzel & McNicholas
1545 Wilshire Boulevard
Los Angeles, CA 90017
[213] 483-1961

Sidney Stein
Stein Zauderer Ellenhorn
Friedman & Kaplan
875 Third Avenue
New York, NY 10022
[212] 956-3700

Mr. Morgan was lead adversary counsel during the trial, and Mr. Stein was lead adversary counsel during the pre-trial stages.

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. **List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients, or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.**

I have no anticipation of any such receipts or future benefits except to note the following:

1. Summit Rovins & Feldesman Retirement Plan. My share of this plan is fully vested. My share is presently invested in Sanford C. Bernstein & Co. Equity Fund, a mutual fund. Upon my resignation from this firm, my share of the retirement plan will have no further connection with Summit Rovins & Feldesman. The balance of the information sought is contained in a schedule to the financial statements delivered herewith.

2. Summit Rovins & Feldesman. I am a partner of this firm. Upon my resignation, I will be entitled to receive an amount equivalent to the value of my partnership, as well as earnings attributable to my partnership share for the year or partial year of which I will have been a partner. Neither the amount attributable to the value of my partnership nor the amount of earnings attributable to me for 1987 has yet been determined. The amounts that will be due me will not be dependent upon post-1987 earnings of the firm, and will be paid to me within three years or less from the date of my resignation.

2. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.

Potential conflicts of interest may arise in appeals involving clients of Summit Rovins & Feldesman, or by the firm acting as attorneys for parties to an appeal, or by reason of investments I hold.

Because the U.S. Court of Appeals for the Second Circuit has many more judges than are necessary to hear any particular appeal, it would seem feasible to avoid potential conflicts of interest. Three other judges could, it would appear, conveniently hear any appeal as to which my relationship, past or present, with a party would create an appearance of impropriety. If the possible conflict of interest was not identified in advance of the assignment of judges to the appeal, recusal would appear appropriate. I would, of course, follow any applicable code of ethics, guideline or statute in this regard, at a minimum. With respect to the appearance of impropriety that might be associated with the involvement of my law firm or any of its clients with which I am familiar in an appeal, it would appear to me that at least five years would be necessary after resignation before it would be appropriate to hear an appeal in which the firm or such clients were involved. If any code of ethics, statute or guideline suggested or required a longer period, I would, of course, use the longer period.

3. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service to the court? If so, explain.

No.

4. List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding $500 or more. (If you prefer to do so, copies of the Executive Personnel Financial Disclosure Report, required by the Ethics in Government Act of 1978, may be substituted here.)

Enclosed herewith is a copy of the Executive Personnel Financial Disclosure Report required by the Ethics in Government Act of 1978.

5. Please complete the attached financial net worth statement in detail (add schedules as called for).

Included in the enclosure is a financial net worth statement and schedules.

6. Have you ever held a position or played a role in a political campaign?

Yes.

If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

During the period September 1959 to April 1975, I performed minor functions in many political campaigns through the New York Young Republican Club. I cannot recall all of the campaigns, but included were the campaigns of Louis J. Lefkowitz for Mayor of the City of New York and Kenneth J. Keating for U.S. Senator from New York. I held no title or position of responsibility in any of those campaigns. During John V. Lindsay's first campaign for Mayor of the City of New York, in 1966, I was in charge of volunteer work and volunteer headquarters on the west side of Manhattan from 96 Street south.

III. GENERAL (PUBLIC)

1. An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

My public service activity has been of a community and professional nature. I have initiated, organized and chaired seminars for lawyers on a variety of litigation topics since 1972. I have been an active member of bar association committees. I have written on professional topics. I have served successively for about twenty years two public bodies charged with the enhancement of the quality of the judiciary. I have performed a succession of responsibilities for The Ohio State University. I have been a trustee and vice chairman of the Constitutional Commission of The Boys Clubs of America. In a normal year, several hundreds of hours of my time are devoted to such activities, with little or no compensation.

2. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion.

Do you currently belong, or have you belonged, to any organization which discriminates -- through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership.

No.

What have you done to try to change these policies?

Not applicable.

3. Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, did it recommend your nomination?

I am not aware of a selection commission that recommends candidates for the United States Court of Appeals for the Second Circuit.

Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and interviews in which you participated).

In mid-June of 1987, I was asked by Deputy Attorney General Arnold I. Burns whether I would be willing to be considered as a possible candidate for the Court of Appeals for the Second Circuit. Shortly thereafter, I visited at the Department of Justice with Mr. Burns and Assistant Attorney General Stephen Markman, at the conclusion of which I agreed to be considered for that position. Subsequently, I was interviewed by a variety of lawyers within the Department of Justice and supplied biographical detail to them. Either in late June or early July 1987, I was informed that the Department of Justice had recommended me to the President for appointment and, within a few days, I was notified that the President had authorized the submission of my name to the Federal Bureau of Investigation and to the American Bar Association. I have since been interviewed by an agent of the Federal Bureau of Investigation, a member of the American Bar Association Standing Committee on the Federal Judiciary, a Sub-Committee (two persons) of the Association of the Bar of the City of New York and by the full Committee on the Judiciary of that Association. I have also filled out many forms.

4. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as seeking any express or implied assurances concerning your position on such case, issue or question? If so, please explain fully.

No.

5. Please discuss your views on the following criticism involving "judicial activism."

The role of the Federal judiciary within the Federal government, and within society generally, has become the subject of increasing controversy in recent years. It has become the target of both popular and academic criticism that alleges that the judicial branch has usurped many of the prerogatives of other branches and levels of government. Some of the characteristics of this "judicial activism" have been said to include:

a. A tendency by the judiciary toward problem-solution rather than grievance-resolution;

b. A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;

c. A tendency by the judiciary to impose broad, affirmative duties upon governments and society;

d. A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and

e. A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.

The role of the courts, in my view, is to decide genuine disputes between persons or entities directly affected thereby. Policy initiatives are for the legislative and executive branches which have the opportunity to build a consensus and to be informed by experts and interested citizens. While recognizing that there is occasionally an unavoidable tension between the necessity to decide particular disputes and the deference that must be paid to the policy-setting role of the executive and legislative branches, a court should seek to avoid the necessity for intrusion in the legislative process and the executive function.

SF 278 (Rev. 1/85)
FPM Chapter 735
U.S. Office of Personnel Management

Financial Disclosure Report

Form Approved
OMB No. [illegible]

Page 1

Reporting Status *(Check Appropriate Box)* ☐ Incumbent ☒ New Entrant, Nominee, or Candidate ☐ Termination Filer	Agency Use Only	OGE Use Only	Date of Appointment, Candidacy, Election or Nomination *(Mo., Day, Yr.)* September 23, 1987
			Termination Date *(If Applicable)* *(Month, Day, Year)*
Reporting Individual's Name	Last Name SUMMIT	First Name and Middle Initial STUART A.	
Position for Which Filing	Title of Position Judge	Department or Agency *(If Applicable)* United States Court of Appeals for the Second Circuit	
Location of Present Office	Address *(Number, Street, City, State and ZIP Code)* 445 Park Avenue, New York, N.Y. 10022	Telephone No. *(Include Area Code)* (212) 702-2200	
Position(s) Held With the Federal Government During the Preceding 12 Months *(If Not Same as Above)*	Title of Position(s) and Date(s) Held None		
Presidential Nominees Subject to Senate Confirmation	Name of Congressional Committee Considering Nomination Judiciary Committee	Do You Intend to Create a Qualified Diversified Trust? ☐ Yes ☒ No	
Certification I CERTIFY that the statements I have made on this form and all attached schedules are true, complete and correct to the best of my knowledge and belief.	Signature of Reporting Individual	Date *(Month, Day, Year)* 9/23/87	
Other Review (If desired by agency)	Signature of Other Reviewer	Date *(Month, Day, Year)*	
Agency Ethics Official's Opinion The information contained in this report discloses no conflict of interest under applicable laws and regulations	Signature of Designated Agency Ethics Official/Reviewing Official	Date *(Month, Day, Year)*	
Office of Government Ethics Use Only	Signature	Date *(Month, Day, Year)*	

Reporting Periods

Incumbents: Complete Schedules A, B, C, and Part I of D. The reporting period is the preceding calendar year except for Part II of Schedule C and Part I of Schedule D where you must also include any positions held or agreements or arrangements made from the beginning of the filing year until the date you file.

Termination Filers: Complete Schedules A, B, C, and Part I of D. The reporting period begins at the end of the period covered by your previous filing and ends at the date of termination.

Nominees, New Entrants and Candidates for President and Vice President: Complete Schedules A, C, and D. (Candidates do not file Part II of Schedule D.)

- **Schedule A**—The reporting period for Income (BLOCK C) and Transactions Test (BLOCK D) is the preceding calendar year and the current calendar year up to the date of filing. Value assets in BLOCK B as of any date you choose that is within 31 days of the date of filing.
- **Schedule C, Part I** (Liabilities)—The reporting period is the preceding calendar year and the current calendar year up to any date you choose that is within 31 days of the date of filing.
- **Schedule C, Part II** (Agreements and Arrangements)—Show any agreements or arrangements as of the date of filing.
- **Schedule D**—The reporting period is the preceding two calendar years and the current calendar year up to the date of filing.

Comments of Reviewing Officials *(If additional space is required, use the reverse side of this sheet)*

(Check box if comments are continued on the reverse side) ☐

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278-108

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SF 278 (Rev. [illegible])
FPM Chapter 734
U.S. Office of Personnel Management

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Reporting Individual's Name				
STUART A. SUMMIT	**Assets and Income**	Page Number	2	Schedule A

All Filers: In BLOCK A report (a) the identity of each asset held for the production of income at the close of the reporting period which had a fair market value exceeding $1000 and (b) any other asset or source of income which generated over $100 in income during the reporting period. This includes but is not limited to employers, stocks, bonds, tax shelters, bank accounts, real property, mutual funds, pensions, IRA assets, assets of certain trusts, commodities futures, personal businesses and partnership interests. Exclude your personal residence unless you rent it out. See instructions for rules on bank accounts and complex holdings.

All Filers: In BLOCK B report the value of each asset listed in BLOCK A which had a fair market value exceeding $1000 at the close of the reporting period.

All Filers: In BLOCK C report the type and amount of income exceeding $100 or more received from the assets and other sources of income listed in BLOCK A. You must report the **actual amount** of any income not of a type specifically noted below. You need not report the actual amount of your spouse's earned income, only the source in BLOCK A. You may not check "qualified trust" unless you have a blind trust which has been specifically approved by the Office of Government Ethics. If you, your spouse or dependent child are the beneficiary of a trust which no one of you created and has no knowledge of the assets, refer to the instructions to see if it qualifies as an "excepted trust." If "none" (or less than $101) is checked under Category of Amount of Income, no other entries need be made in BLOCK C for that item.

Incumbents and Termination Filers only: In BLOCK D, for any real property, stocks, bonds, commodities futures and other securities listed in BLOCK A, did you purchase, sell, or exchange the item during the reporting period for a value that exceeds $1000?

BLOCK A Assets & Income Sources		BLOCK B Valuation of Assets							BLOCK C Income																	BLOCK D Transactions Test	
Identify each asset and income source of yours, your spouse(S) and your dependent child (DC). NONE ☐		Category of Value (X)							Type of Income (X)							Category of Amount of Income (X)										If yes, complete Schd. B Part I for those assets including those sold for a loss.	
		None (or less than $1001)	$1,001-$5,000	$5,001-$15,000	$15,001-$50,000	$50,001-$100,000	$100,001-$250,000	Over $250,000	Dividends	Rent	Interest	Capital Gains	Excepted Trust	Qualified Trust	Other (Specify Type)	None (or less than $101)	$101-$1,000	$1,001-$2,500	$2,501-$5,000	$5,001-$15,000	$15,001-$50,000	$50,001-$100,000	Over $100,000	Actual Amount Only if "Other" Specified	Date (Mo., Day, Yr.) Only if Honoraria	YES	NO
S or DC Examples	X Y Z Common				x				x									x								x	
	Doe Jones & Smith, Hometown, USA			x											ptnrshp income									$50,000			
1	Belmont Co. Ohio 1/1/13 - 12.75 (Sold)										X									X							
2	Sale of Belmont Co. Ohio 1/1/13 - 12.75											X								X							
3	Cuyahoga, Ohio 1/1/14 - 10.0				X						X								X								
4	Hamilton Co. Ohio 1/1/07 - 11.0 (Sold)										X									X							
5	Sale of Hamilton Co. Ohio 1/10/07 - 11.0											X									X						
6	Intermountain Power 7/1/21 - 11.625 (See Footnote 1)										X							X									
7	Metr. Trans. Auth. 7/1/12 - 10.375 (Sold)										X									X							
8	Sale of Metr. Trans. Auth. 7/1/12 - 10.375											X						X									
9	Metr. Trans. Auth. 7/1/15 - 9.75 (Sold)										X									X							
10	Sale of Metr. Trans. Auth. 7/1/15 - 9.75											X								X							

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278-209

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FPM Chapter 734
U.S. Office of Personnel Management

Form Approved
OMB No. 3209-0001

Reporting Individual's Name: STUART A. SUMMIT

Assets and Income

Page Number: 3

Schedule A

All Filers: In BLOCK A report (a) the identity of each asset held for the production of income at the close of the reporting period which had a fair market value exceeding $1000 and (b) any other asset or source of income which generated over $100 in income during the reporting period. This includes but is not limited to employers, stocks, bonds, tax shelters, bank accounts, real property, mutual funds, pensions, IRA assets, assets of certain trusts, commodities futures, personal businesses and partnership interests. Exclude your personal residence unless you rent it out. See instructions for rules on bank accounts and complex holdings.

All Filers: In BLOCK B report the value of each asset listed in BLOCK A which had a fair market value exceeding $1000 at the close of the reporting period.

All Filers: In BLOCK C report the type and amount of income exceeding $100 or more received from the assets and other sources of income listed in BLOCK A. You must report the **actual amount** of any income not of a type specifically noted below. You need not report the actual amount of your spouse's earned income, only the source in BLOCK A. You may not check "qualified trust" unless you have a blind trust which has been specifically approved by the Office of Government Ethics. If you, your spouse or dependent child are the beneficiary of a trust which no one of you created and has no knowledge of the assets, refer to the instructions to see if it qualifies as an "excepted trust." If "none" (or less than $101) is checked under Category of Amount of Income, no other entries need be made in BLOCK C for that item.

Incumbents and Termination Filers only: In BLOCK D, for any real property, stocks, bonds, commodities futures and other securities listed in BLOCK A, did you purchase, sell, or exchange the item during the reporting period for a value that exceeds $1000? ▼

BLOCK A Assets & Income Sources			BLOCK B Valuation of Assets							BLOCK C Income																	BLOCK D Transactions Test	
Identify each asset and income source of yours, your spouse(S) and your dependent child (DC). NONE ☐			Category of Value (X)							Type of Income (X)							Category of Amount of Income (X)								Actual Amount Only if "Other" Specified	Date (Mo., Day, Yr.) Only if Honoraria	If yes, complete Schd. B Part I for those assets including those sold for a loss.	
S or DC			None (or less than $1001)	$1,001-$5,000	$5,001-$15,000	$15,001-$50,000	$50,001-$100,000	$100,001-$250,000	Over $250,000	Dividends	Rent	Interest	Capital Gains	Excepted Trust	Qualified Trust	Other (Specify Type)	None (or less than $101)	$101-$1,000	$1,001-$2,500	$2,501-$5,000	$5,001-$15,000	$15,001-$50,000	$50,001-$100,000	Over $100,000			YES	NO
	Examples.	X Y Z Common				x				x									x								x	
		Doe Jones & Smith, Hometown, USA			x											ptnrshp income									$50,000			
1		Metr. Trans. Auth. 7/1/05 - 10.125 (Sold)										X									X							
2		Sale of Metr. Trans. Auth. 7/1/05 - 10.125											X								X							
3		Metr. Trans. Auth. 7/1/99 - 9.85			X							X							X									
4		Puerto Rico 7/1/02 - 8.0 (Sold)										X									X							
5		Sale of Puerto Rico 7/1/02 - 8.0											X								X							
6		New York State Med Care 1/15/03 - 10.0					X					X									X							
7		Oppenheimer-Centennial Tax Exempt Fund	X									X						X										
8		Ohio Air Quality 2/1/14 - 9.5				X						X									X							
9		Phil. Pa. Hosp. Auth. 4/1/10 - 14.75 (Sold)										X								X								
10		Sale of Phil. Pa. Hosp. Auth. 4/1/10 - 14.75											X								X							

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SF 278 (Rev 1/85)
FPM Chapter 734
U.S. Office of Personnel Management

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Reporting Individual's Name		Page Number	Schedule
STUART A. SUMMIT	**Assets and Income**	4	A

All Filers: In BLOCK A report (a) the identity of each asset held for the production of income at the close of the reporting period which had a fair market value exceeding $1000 and (b) any other asset or source of income which generated over $100 in income during the reporting period. This includes but is not limited to employers, stocks, bonds, tax shelters, bank accounts, real property, mutual funds, pensions, IRA assets, assets of certain trusts, commodities futures, personal businesses and partnership interests. Exclude your personal residence unless you rent it out. See instructions for rules on bank accounts and complex holdings.

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All Filers: In BLOCK C report the type and amount of income exceeding $100 or more received from the assets and other sources of income listed in BLOCK A. You must report the **actual amount** of any income not of a type specifically noted below. You need not report the actual amount of your spouse's earned income, only the source in BLOCK A. You may not check "qualified trust" unless you have a blind trust which has been specifically approved by the Office of Government Ethics. If you, your spouse or dependent child are the beneficiary of a trust which no one of you created and has no knowledge of the assets, refer to the instructions to see if it qualifies as an "excepted trust." If "none" (or less than $101) is checked under Category of Amount of Income, no other entries need be made in BLOCK C for that item.

Incumbents and Termination Filers only: In BLOCK D, for any real property, stocks, bonds, commodities futures and other securities listed in BLOCK A, did you purchase, sell, or exchange the item during the reporting period for a value that exceeds $1000?

	BLOCK A Assets & Income Sources	**BLOCK B** Valuation of Assets							**BLOCK C** Income																	**BLOCK D** Transactions Test	
	Identify each asset and income source of yours, your spouse(S) and your dependent child (DC). NONE ☐	Category of Value (X)							Type of Income (X)						Other (Specify Type)	Category of Amount of Income (X)								Actual Amount Only if "Other" Specified	Date (Mo., Day, Yr.) Only if Honoraria	If yes, complete Schd. B Part I for those assets including those sold for a loss.	
S or DC		None (or less than $1001)	$1,001-$5,000	$5,001-$15,000	$15,001-$50,000	$50,001-$100,000	$100,001-$250,000	Over $250,000	Dividends	Rent	Interest	Capital Gains	Excepted Trust	Qualified Trust		None (or less than $101)	$101-$1,000	$1,001-$2,500	$2,501-$5,000	$5,001-$15,000	$15,001-$50,000	$50,001-$100,000	Over $100,000			YES	NO
Examples	X Y Z Common				X				X									X								X	
	Doe Jones & Smith, Hometown, USA			X											ptnrshp income									$50,000			
1	NYC Gen. Oblig. 8/15/15 - 9.5						X				X									X							
2	Phil. Pa. 8/15/96 - 13.0 (Sold)										X									X							
3	Sale of Phil. Pa. 8/15/96 - 13.0											X							X								
4	Puerto Rico 8/15/13 - 10.0				X						X								X								
5	Pan-American 4/15/04 - 15.0 (Sold)										X										X						
6	Sale of Pan-American 4/15/04 - 15.0											X				X											
7	General Dynamics - Common					X			X									X									
8	Hallwood Group 9/1/91 - 6.75		X								X						X										
9	Phil. Pa. 3/15/07 - 14.0 (Sold)										X								X								
10	Sale of Phil. Pa. 3/15/07 - 14.0											X							X								

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SF 278 (Rev. 1/85)
FPM Chapter 734
U.S. Office of Personnel Management

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Reporting Individual's Name		Page Number	Schedule
STUART A. SUMMIT	**Assets and Income**	5	A

All Filers: In BLOCK A report (a) the identity of each asset held for the production of income at the close of the reporting period which had a fair market value exceeding $1000 and (b) any other asset or source of income which generated over $100 in income during the reporting period. This includes but is not limited to employers, stocks, bonds, tax shelters, bank accounts, real property, mutual funds, pensions, IRA assets, assets of certain trusts, commodities futures, personal businesses and partnership interests. Exclude your personal residence unless you rent it out. See instructions for rules on bank accounts and complex holdings.

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Incumbents and Termination Filers only: In BLOCK D, for any real property, stocks, bonds, commodities futures and other securities listed in BLOCK A, did you purchase, sell, or exchange the item during the reporting period for a value that exceeds $1000?

	BLOCK A Assets & Income Sources	BLOCK B Valuation of Assets							BLOCK C Income																	BLOCK D Transactions Test	
	…tify each asset and income source yours, your spouse(S) and your dependent child (DC). NONE ☐	Category of Value (X)							Type of Income (X)							Category of Amount of Income (X)										If yes, complete Schd. B Part I for those assets including those sold for a loss.	
S or DC		None (or less than $1001)	$1,001-$5,000	$5,001-$15,000	$15,001-$50,000	$50,001-$100,000	$100,001-$250,000	Over $250,000	Dividends	Rent	Interest	Capital Gains	Excepted Trust	Qualified Trust	Other (Specify Type)	None (or less than $101)	$101-$1,000	$1,001-$2,500	$2,501-$5,000	$5,001-$15,000	$15,001-$50,000	$50,001-$100,000	Over $100,000	Actual Amount Only if "Other" Specified	Date (Mo., Day, Yr.) Only if Honoraria	YES	NO
Examples:	X Y Z Common				X				X									X								X	
	Doe Jones & Smith, Hometown, USA			X											ptnrshp income									$50,000			
1	Puerto Rico Hsg 10/1/15 - 9.875					X					X									X							
2	New York City 4/15/04 - 6.25				X						X							X									
3	Ohio State Air Qual 5/1/00 - 7.875			X							X							X									
4	Metr. Trans. Auth. 7/1/99 - 8.0				X						X							X									
5	Metr. Trans. Auth. 7/1/00 - 7.9				X						X								X								
6	Metr. Trans. Auth. 7/1/06 - 8.0				X						X								X								
7	Sandusky Co. Ohio 12/1/01 - 15.0 (Sold)										X						X										
8	Sale of Sandusky Co. Ohio 12/1/01 - 15.0											X					X										
9	Sandusky Co. Ohio 12/1/11 - 15.5 (Sold)										X						X										
10	Sale of Sandusky Co. Ohio 12/1/11 - 15.5											X						X									

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SF 278 (Rev. [illegible])
FPM Chapter 734
U.S. Office of Personnel Management

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Reporting Individual's Name STUART A. SUMMIT	**Assets and Income**	Page Number 6	Schedule A

All Filers: In BLOCK A report (a) the identity of each asset held for the production of income at the close of the reporting period which had a fair market value exceeding $1000 and (b) any other asset or source of income which generated over $100 in income during the reporting period. This includes but is not limited to employers, stocks, bonds, tax shelters, bank accounts, real property, mutual funds, pensions, IRA assets, assets of certain trusts, commodities futures, personal businesses and partnership interests. Exclude your personal residence unless you rent it out. See instructions for rules on bank accounts and complex holdings.

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Incumbents and Termination Filers only: In BLOCK D, for any real property, stocks, bonds, commodities futures and other securities listed in BLOCK A, did you purchase, sell, or exchange the item during the reporting period for a value that exceeds $1000?

	BLOCK A Assets & Income Sources	BLOCK B Valuation of Assets							BLOCK C Income																	BLOCK D Transactions Test	
	Identify each asset and income source of yours, your spouse(S) and your dependent child (DC). NONE ☐	Category of Value (X)							Type of Income (X)							Category of Amount of Income (X)										If yes, complete Schd. B Part I for those assets including those sold for a loss.	
S or DC		None (or less than $1001)	$1,001-$5,000	$5,001-$15,000	$15,001-$50,000	$50,001-$100,000	$100,001-$250,000	Over $250,000	Dividends	Rent	Interest	Capital Gains	Excepted Trust	Qualified Trust	Other (Specify Type)	None (or less than $101)	$101-$1,000	$1,001-$2,500	$2,501-$5,000	$5,001-$15,000	$15,001-$50,000	$50,001-$100,000	Over $100,000	Actual Amount Only if "Other" Specified	Date (Mo., Day, Yr.) Only if Honoraria	YES	NO
Example	X Y Z Common				X				X									X								X	
	Doe Jones & Smith, Hometown, USA			X											ptnrshp income									$50,000			
1	Ohio State Hosp 12/1/14 - 13.25 (Sold)										X								X								
2	Sale of Ohio State Hosp 12/1/14 - 13.25											X				X											
3	New York City Gen. Oblig. 9/1/08 - 7.5					X					X								X								
4	Greater Detroit Mich 12/13/08 - 9.25					X					X								X								
5	Oppenheimer - Daily Cash Accum Fund	X							X								X										
6	Cleremont Co. Ohio 6/1/07 - 12.0 (Sold)										X							X									
7	Sale of Cleremont Co. Ohio 6/1/07 - 12.0											X					X										
8	Cuyahoga Co. Ohio 12/1/13 - 10.375				X						X								X								
9	UTS Empire Muni Trust #35			X							X						X										
10	UTS Empire Muni Trust #32			X							X							X									

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278-209

SF 278 (Rev. 1/85)
FPM Chapter 734
U.S. Office of Personnel Management

Form Approved
OMB No. 3209-0002

Reporting Individual's Name		Page Number		
STUART A. SUMMIT	**Assets and Income**		7	Schedule A

All Filers: In BLOCK A report (a) the identity of each asset held for the production of income at the close of the reporting period which had a fair market value exceeding $1000 and (b) any other asset or source of income which generated over $100 in income during the reporting period. This includes but is not limited to employers, stocks, bonds, tax shelters, bank accounts, real property, mutual funds, pensions, IRA assets, assets of certain trusts, commodities futures, personal businesses and partnership interests. Exclude your personal residence unless you rent it out. See instructions for rules on bank accounts and complex holdings.

All Filers: In BLOCK B report the value of each asset listed in BLOCK A which had a fair market value exceeding $1000 at the close of the reporting period.

All Filers: In BLOCK C report the type and amount of income exceeding $100 or more received from the assets and other sources of income listed in BLOCK A. You must report the **actual amount** of any income not of a type specifically noted below. You need not report the actual amount of your spouse's earned income, only the source in BLOCK A. You may not check "qualified trust" unless you have a blind trust which has been specifically approved by the Office of Government Ethics. If you, your spouse or dependent child are the beneficiary of a trust which no one of you created and has no knowledge of the assets, refer to the instructions to see if it qualifies as an "excepted trust." If "none" (or less than $101) is checked under Category of Amount of Income, no other entries need be made in BLOCK C for that item.

Incumbents and Termination Filers only: In BLOCK D, for any real property, stocks, bonds, commodities futures and other securities listed in BLOCK A, did you purchase, sell, or exchange the item during the reporting period for a value that exceeds $1000?

	BLOCK A Assets & Income Sources	**BLOCK B** Valuation of Assets							**BLOCK C** Income																	**BLOCK D** Transactions Test	
	Identify each asset and income source of yours, your spouse(S) and your dependent child (DC). NONE ☐	Category of Value (X)							Type of Income (X)							Category of Amount of Income (X)										If yes, complete Schd. B Part I for those assets including those sold for a loss.	
S or DC		None (or less than $1001)	$1,001-$5,000	$5,001-$15,000	$15,001-$50,000	$50,001-$100,000	$100,001-$250,000	Over $250,000	Dividends	Rent	Interest	Capital Gains	Excepted Trust	Qualified Trust	Other (Specify Type)	None (or less than $101)	$101-$1,000	$1,001-$2,500	$2,501-$5,000	$5,001-$15,000	$15,001-$50,000	$50,001-$100,000	Over $100,000	Actual Amount Only if "Other" Specified	Date (Mo., Day, Yr.) Only if Honoraria	YES	NO
Examples	X Y Z Common				x				x									x								x	
	Doe Jones & Smith, Hometown, USA			x											ptnrshp income									$90,000			
1	UTS Muni Inc Trust #67			X							X						X										
2	UTS Muni Trust #19			X							X							X									
3	UTS Muni Trust #22					X					X								X								
4	Puerto Rico 12/1/15 - 7.5					X					X									X							
5	Triborough Bridge 1/1/15 - 9.625				X						X							X									
6	Metr. Trans. Auth. 7/1/16 - 7.5					X					X								X								
7	Airlease Ltd. Depository Units				X				X								X										
8	TWA 3/1/92 - 4.0					X					X					X											
9	Resorts Int. Class A			X					X							X											
10	Sale of Resorts Int. Class A											X								X							

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276-200

SF 278 (Rev. 1/85)
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U.S. Office of Personnel Management

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OMB No. [illegible]

Reporting Individual's Name		Page Number	Schedule
STUART A. SUMMIT	**Assets and Income**	8	A

All Filers: In BLOCK A report (a) the identity of each asset held for the production of income at the close of the reporting period which had a fair market value exceeding $1000 and (b) any other asset or source of income which generated over $100 in income during the reporting period. This includes but is not limited to employers, stocks, bonds, tax shelters, bank accounts, real property, mutual funds, pensions, IRA assets, assets of certain trusts, commodities futures, personal businesses and partnership interests. Exclude your personal residence unless you rent it out. See instructions for rules on bank accounts and complex holdings.

All Filers: In BLOCK B report the value of each asset listed in BLOCK A which had a fair market value exceeding $1000 at the close of the reporting period.

All Filers: In BLOCK C report the type and amount of income exceeding $100 or more received from the assets and other sources of income listed in BLOCK A. You must report the **actual amount** of any income not of a type specifically noted below. You need not report the actual amount of your spouse's earned income, only the source in BLOCK A. You may not check "qualified trust" unless you have a blind trust which has been specifically approved by the Office of Government Ethics. If you, your spouse or dependent child are the beneficiary of a trust which no one of you created and has no knowledge of the assets, refer to the instructions to see if it qualifies as an "excepted trust." If "none" (or less than $101) is checked under Category of Amount of Income, no other entries need be made in BLOCK C for that item.

Incumbents and Termination Filers only: In BLOCK D, for any real property, stocks, bonds, commodities futures and other securities listed in BLOCK A, did you purchase, sell, or exchange the item during the reporting period for a value that exceeds $1000?

	BLOCK A Assets & Income Sources	BLOCK B Valuation of Assets							BLOCK C Income																	BLOCK D Transactions Test	
	Identify each asset and income source of yours, your spouse(S) and your dependent child (DC). NONE ☐	Category of Value (X)							Type of Income (X)							Category of Amount of Income (X)										If yes, complete Schd. B Part I for those assets including those sold for a loss.	
S or DC		None (or less than $1001)	$1,001-$5,000	$5,001-$15,000	$15,001-$50,000	$50,001-$100,000	$100,001-$250,000	Over $250,000	Dividends	Rent	Interest	Capital Gains	Excepted Trust	Qualified Trust	Other (Specify Type)	None (or less than $101)	$101-$1,000	$1,001-$2,500	$2,501-$5,000	$5,001-$15,000	$15,001-$50,000	$50,001-$100,000	Over $100,000	Actual Amount Only if "Other" Specified	Date (Mo., Day, Yr.) Only if Honoraria	YES	NO
Example	X Y Z Common				X				X									X								X	
	Doe Jones & Smith, Hometown, USA			X											ptnrshp income									$50,000			
1	Sale of L.D. Brinkman - Common											X						X									
2	Sale - Beatrice Corp. calls											X				X											
3	Sale of First Exec. Corp. - Common											X						X									
4	Sale of Gen. Corp. WTS											X								X							
5	Carnival Cruise Lines Class A			X												X											
6	Chantal Pharm Corp.				X											X											
7	Keystone Camera Products Corp.				X											X											
8	Ohio State Air Qual 1/1/05 - 8.375		X								X								X								
9	Wash. State 7/1/02 - 9.0			X							X								X								
10	Prudential-Bache Money Market			X					X								X										

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SF 278 (Rev. [illegible])
FPM Chapter 734
U.S. Office of Personnel Management

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Reporting Individual's Name		Page Number	Schedule
STUART A. SUMMIT	**Assets and Income**	9	A

All Filers: In BLOCK A report (a) the identity of each asset held for the production of income at the close of the reporting period which had a fair market value exceeding $1000 and (b) any other asset or source of income which generated over $100 in income during the reporting period. This includes but is not limited to employers, stocks, bonds, tax shelters, bank accounts, real property, mutual funds, pensions, IRA assets, assets of certain trusts, commodities futures, personal businesses and partnership interests. Exclude your personal residence unless you rent it out. See instructions for rules on bank accounts and complex holdings.

All Filers: In BLOCK B report the value of each asset listed in BLOCK A which had a fair market value exceeding $1000 at the close of the reporting period.

All Filers: In BLOCK C report the type and amount of income exceeding $100 or more received from the assets and other sources of income listed in BLOCK A. You must report the actual amount of any income not of a type specifically noted below. You need not report the actual amount of your spouse's earned income, only the source in BLOCK A. You may not check "qualified trust" unless you have a blind trust which has been specifically approved by the Office of Government Ethics. If you, your spouse or dependent child are the beneficiary of a trust which no one of you created and has no knowledge of the assets, refer to the instructions to see if it qualifies as an "excepted trust." If "none" (or less than $101) is checked under Category of Amount of Income, no other entries need be made in BLOCK C for that item.

Incumbents and Termination Filers only: In BLOCK D, for any real property, stocks, bonds, commodities futures and other securities listed in BLOCK A, did you purchase, sell, or exchange the item during the reporting period for a value that exceeds $1000?

	BLOCK A Assets & Income Sources	BLOCK B Valuation of Assets							BLOCK C Income																	BLOCK D Transactions Test	
	Identify each asset and income source of yours, your spouse(S) and your dependent child (DC). NONE ☐	Category of Value (X)							Type of Income (X)						Other (Specify Type)	Category of Amount of Income (X)								Actual Amount Only if "Other" Specified	Date (Mo., Day, Yr.) Only if Honoraria	If yes, complete Schd. B Part I for these assets including those sold for a loss.	
S or DC		None (or less than $1001)	$1,001-$5,000	$5,001-$15,000	$15,001-$50,000	$50,001-$100,000	$100,001-$250,000	Over $250,000	Dividends	Rent	Interest	Capital Gains	Excepted Trust	Qualified Trust		None (or less than $101)	$101-$1,000	$1,001-$2,500	$2,501-$5,000	$5,001-$15,000	$15,001-$50,000	$50,001-$100,000	Over $100,000			YES	NO
Examples	X Y Z Common				X				X									X								X	
	Doe Jones & Smith, Hometown, USA			X											ptnrshp income									$60,000			
1	Int. Design Group Inc.	X							X							X											
2	Pan Am 4/15/04 - 15.0 (IRA)			X							X							X									
3	CATS - Prin - Ser M 5/15/04 (IRA)		X													X											
4	CATS - Prin - Ser Z 5/15/05 (IRA)		X													X											
5	Ohio HFA MTG REV 2/1/24 (DC)			X												X											
6	MTG Bankers Fin Corp 11/1/01 (DC)			X												X											
7	CATS Ser E 11/15/01 (DC)			X												X											
8	NYC Gen Obl 2/1/97 - 10.5				X						X								X								
9	NYC Gen Obl 9/15/03 - 10.375				X						X								X								
10	Highland Mich 4/1/13 - 11.5				X						X									X							

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U.S. Office of Personnel Management

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OMB No. [illegible]

Reporting Individual's Name STUART A. SUMMIT	**Assets and Income**	Page Number 10	Schedule A

All Filers: In BLOCK A report (a) the identity of each asset held for the production of income at the close of the reporting period which had a fair market value exceeding $1000 and (b) any other asset or source of income which generated over $100 in income during the reporting period. This includes but is not limited to employers, stocks, bonds, tax shelters, bank accounts, real property, mutual funds, pensions, IRA assets, assets of certain trusts, commodities futures, personal businesses and partnership interests. Exclude your personal residence unless you rent it out. See instructions for rules on bank accounts and complex holdings.

All Filers: In BLOCK B report the value of each asset listed in BLOCK A which had a fair market value exceeding $1000 at the close of the reporting period.

All Filers: In BLOCK C report the type and amount of income exceeding $100 or more received from the assets and other sources of income listed in BLOCK A. You must report the **actual amount** of any income not of a type specifically noted below. You need not report the actual amount of your spouse's earned income, only the source in BLOCK A. You may not check "qualified trust" unless you have a blind trust which has been specifically approved by the Office of Government Ethics. If you, your spouse or dependent child are the beneficiary of a trust which no one of you created and has no knowledge of the assets, refer to the instructions to see if it qualifies as an "excepted trust." If "none" (or less than $101) is checked under Category of Amount of Income, no other entries need be made in BLOCK C for that item.

Incumbents and Termination Filers only: In BLOCK D, for any real property, stocks, bonds, commodities futures and other securities listed in BLOCK A, did you purchase, sell, or exchange the item during the reporting period for a value that exceeds $1000? ▼

	BLOCK A Assets & Income Sources	BLOCK B Valuation of Assets							BLOCK C Income																	BLOCK D Transactions Test	
	Identify each asset and income source of yours, your spouse(S) and your dependent child (DC). NONE ☐	Category of Value (X)							Type of Income (X)						Other (Specify Type)	Category of Amount of Income (X)								Actual Amount Only if "Other" Specified	Date (Mo., Day, Yr.) Only if Honoraria	If yes, complete Schd. B Part I for those assets including those sold for a loss.	
S or DC		None (or less than $1001)	$1,001-$5,000	$5,001-$15,000	$15,001-$50,000	$50,001-$100,000	$100,001-$250,000	Over $250,000	Dividends	Rent	Interest	Capital Gains	Excepted Trust	Qualified Trust		None (or less than $101)	$101-$1,000	$1,001-$2,500	$2,501-$5,000	$5,001-$15,000	$15,001-$50,000	$50,001-$100,000	Over $100,000			YES	NO
Examples	X Y Z Common				x				x									x								x	
	Doe Jones & Smith, Hometown, USA			x											ptnrshp income									$50,000			
1	New York State Hsg 11/1/19 - 8,25				X						X								X								
2	Keystone Camera Products - WTS A		X													X											
3	Intervoice Inc. - Units			X												X											
4	Summit Rovins & Feldesman, NY, NY (See Footnote 12)							X							Ptnship Income									272,861			
5	Int. Microcomputer Software Inc.	X														X											
6	Immucell Corp. - Common	X														X											
7	Celerity Computing - Common	X														X											
8	Life Insurance - Mutual Benefit Life		X													X											
9	Envipco Inc. - Class A (See Footnote 2)				X											X											
10	ICHOR Technology Inc. (See Footnote 3)					X										X											

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SF 278 (Rev. [illegible])
FPM Chapter 734
U S Office of Personnel Management

Form Approved
OMB No. [illegible]

Reporting Individual's Name STUART A. SUMMIT	Assets and Income	Page Number 11	Schedule A

All Filers: In BLOCK A report (a) the identity of each asset held for the production of income at the close of the reporting period which had a fair market value exceeding $1000 and (b) any other asset or source of income which generated over $100 in income during the reporting period. This includes but is not limited to employers, stocks, bonds, tax shelters, bank accounts, real property, mutual funds, pensions, IRA assets, assets of certain trusts, commodities futures, personal businesses and partnership interests. Exclude your personal residence unless you rent it out. See instructions for rules on bank accounts and complex holdings.

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S or DC	BLOCK A Assets & Income Sources: Identify each asset and income source of yours, your spouse(S) and your dependent child (DC). NONE ☐	BLOCK B Valuation of Assets: Category of Value (X): None (or less than $1001)	$1,001-$5,000	$5,001-$15,000	$15,001-$50,000	$50,001-$100,000	$100,001-$250,000	Over $250,000	BLOCK C Income: Type of Income (X): Dividends	Rent	Interest	Capital Gains	Excepted Trust	Qualified Trust	Other (Specify Type)	Category of Amount of Income (X): None (or less than $101)	$101-$1,000	$1,001-$2,500	$2,501-$5,000	$5,001-$15,000	$15,001-$50,000	$50,001-$100,000	Over $100,000	Actual Amount Only If "Other" Specified	Date (Mo., Day, Yr.) Only If Honoraria	BLOCK D Transactions Test: If yes, complete Sched. B Part I for those assets including those sold for a loss. YES	NO
Example	X Y Z Common				x				x									x								x	
Example	Doe Jones & Smith, Hometown, USA			x											ptnrshp income									$90,000			
1	Flagler-At-First Associates (See Footnote 4)					X										X											
2	Balcones Club Assoc. (See Footnote 5)				X											X											
3	Bud Brook Associates (See Footnote 6)					X										X											
4	Sargent West Apts. Assoc. (See Footnote 7)		X													X											
5	Jerusalem Medical Ptrs (See Footnote 8)				X											X											
6	Petrocorp Res. Acq. Fund (See Footnote 9)				X											X											
7	Cetus Healthcare Ltd. (See Footnote 10)			X												X											
8	Indian River Growers (See Footnote 11)		X													X											
9	All States Oil Producing Co. Canton, Ohio		X							X							X										
10	Spelling Aaron Production Inc. - common		X													X											

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278-209

SF 278 (Rev. [illegible])
FPM Chapter 734
U.S. Office of Personnel Management

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OMB No. [illegible]

Reporting Individual's Name		Page Number		Schedule
STUART A. SUMMIT	Assets and Income		12	A

All Filers: In BLOCK A report (a) the identity of each asset held for the production of income at the close of the reporting period which had a fair market value exceeding $1000 and (b) any other asset or source of income which generated over $100 in income during the reporting period. This includes but is not limited to employers, stocks, bonds, tax shelters, bank accounts, real property, mutual funds, pensions, IRA assets, assets of certain trusts, commodities futures, personal businesses and partnership interests. Exclude your personal residence unless you rent it out. See instructions for rules on bank accounts and complex holdings.

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	BLOCK A Assets & Income Sources	**BLOCK B** Valuation of Assets							**BLOCK C** Income																	**BLOCK D** Transactions Test	
	Identify each asset and income source of yours, your spouse(S) and your dependent child (DC). NONE ☐	Category of Value (X)							Type of Income (X)						Other (Specify Type)	Category of Amount of Income (X)								Actual Amount Only if "Other" Specified	Date (Mo., Day, Yr.) Only if Honoraria	If yes, complete Schd. B Part I for those assets including those sold for a loss.	
		None (or less than $1001)	$1,001-$5,000	$5,001-$15,000	$15,001-$50,000	$50,001-$100,000	$100,001-$250,000	Over $250,000	Dividends	Rent	Interest	Capital Gains	Excepted Trust	Qualified Trust		None (or less than $101)	$101-$1,000	$1,001-$2,500	$2,501-$5,000	$5,001-$15,000	$15,001-$50,000	$50,001-$100,000	Over $100,000			YES	NO
S or DC	Examples: X Y Z Common				X				X									X								X	
	Doe Jones & Smith, Hometown, USA			X											ptnrshp income									$90,000			
1	Ohio Power Co. - Preferred	X														X											
2	Citibank - Bank Accounts			X														X									
3	Summit Rovins & Feldesman Retirement Plan (attached)							X	X											X							
4	General Hydrocarbons Ltd.		X									X								X							
5	Battronics, Inc. (See Footnote 13)			X												X											
6																											
7																											
8																											
9																											
10																											

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STUART A. SUMMIT
EXECUTIVE PERSONNEL FINANCIAL DISCLOSURE REPORT
SCHEDULE A - ASSETS & INCOME

FOOTNOTES

1. Intermountain Power - this bond was not sold, but contributed to [illegible] State University on December 31, 1986.

2. ENVIPCO-Class A - Environmental Products Corporation (ENVIPCO) is a private company which provides automated systems for recovery of [illegible] beverage containers. Address: 11240 Waples Mill Road, [illegible] 22030.

3. Ichor Technology Inc. is a privately owned company and has designed and is manufacturing and selling a modular turnkey computer system that is used to improve the operational efficiency of clinical laboratories through management of workflow and information. Address: 6537 Main Street, Trumbull, Connecticut 06611.

4. Flagler-At-First Associates, Ltd. is a limited partnership that owns an office building in Miami, Florida. Stuart A. Summit is a limited partner. Address: Israel Discount Bank Building, 14 N.E. First Avenue, Miami, Florida.

5. Balcones Club Associates is a limited partnership that owns garden apartments. Stuart A. Summit is a limited partner. Address: 9218 Balcones Club Drive, Austin, Texas.

6. Bud Brook Associates is a New York limited partnership which owns various residential property in Brooklyn, New York. Stuart A. Summit is a limited partner.

7. Sargent West Associates is a limited partnership which owns real property located in Massachusetts. Stuart A. Summit is a limited partner. Address: 667 Main Street, Holyoke, Mass. 01040.

8. Jerusalem Medical Partners, a limited partnership, was formed to engage in research and development in Israel. Stuart A. Summit is a limited partner. Local address: 330 Madison Avenue, New York, New York 10017.

9. PetroCorp Reserve Acquisition Fund, Ltd. I is a limited partnership, the primary purpose of which is to acquire producing oil and gas properties with future developmental potential. Stuart A. Summit is a limited partner. Address: 300 North Atrium, 16800 Greenspoint Park Drive, Houston, Texas.

10. Cetus Healthcare Limited Partnership II is a biochemical concern, located at 1400 53 St., Emeryville, California 94608. Stuart A. Summit is a limited partner.

11. Indian River Growers Associates, Ltd. was initially formed to be in the business of growing oranges. That business failed, apparently because of winter weather problems, and it is now seeking to develop or sell the land. Stuart A. Summit is a limited partner. Address: 493 NE Apollo II Blvd., Palm Bay, Florida.

12. The 1986 distributive share of Summit Rovins & Feldesman partnership income was $272,861. Since the fiscal year end of the Summit Rovins & Feldesman partnership is December 31, the income for 1987 is unknown. It is estimated to be approximately $270,000 for the entire calendar year.

13. Battronics, Inc. is a privately owned corporation that manufactures automobile batteries. Address: 8301 Kell Street, Maple, Ontario LOJ IEO, Canada.

ABA
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Standing Committee on Federal Judiciary
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(202) 331-2210

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Chicago, IL 60611

EIGHTH CIRCUIT
James W. Hewitt
Post Office Box 80268
1815 Y Street
Lincoln, NE 68501

NINTH CIRCUIT
J. David Andrews
1900 Washington Building
Seattle, WA 98101

Samuel L. Williams
45th Floor
355 South Grand Avenue
Los Angeles, CA 90071

TENTH CIRCUIT
James A. Clark
Suite 1100
303 East 17th Avenue
Denver, CO 80203

ELEVENTH CIRCUIT
M. Roland Nachman, Jr.
Post Office Box 78
2 Dexter Avenue
Montgomery, AL 36101

DISTRICT OF COLUMBIA CIRCUIT
James J. Bierbower
International Square
Suite 1275
1875 I Street, NW
Washington, DC 20006

FEDERAL CIRCUIT
John D. Lane
Suite 600
1666 K Street, NW
Washington, DC 20006

BOARD OF GOVERNORS LIAISON
Sharp Whitmore
2085 Gird Road
Fallbrook, CA 92028

STAFF LIAISON
Irene R. Emsellem
2nd Floor, South Lobby
1800 M Street, NW
Washington, DC 20036
(202) 331-2210
ABA/NET: ABA 461

September 30, 1987

CONFIDENTIAL

The Honorable Joseph R. Biden, Jr.
Chairman, United States Senate
Committee on the Judiciary
Washington, D.C. 20510

Re: STUART A. SUMMIT
United States Court of Appeals
for the Second Circuit

Dear Senator Biden:

Thank you for affording this Committee an opportunity to express an opinion pertaining to the nomination of Stuart A. Summit for appointment as Judge of the United States Court of Appeals for the Second Circuit.

A substantial majority of our Committee is of the opinion that Mr. Summit is "Qualified" for this appointment. The minority found him to be Not Qualified.

Sincerely yours,

Harold R. Tyler, Jr.
Chairman

cc: All Committee Members

ROBERT ROBERTO, JR.

Birth:	June 28, 1930	New York, New York
Legal Residence:	New York	
Marital Status:	Married	Norma S. Roberto 3 children
Education:	1948 - 1949	Florida Southern College
	1949 - 1952	Adelphi University B.A. degree
	1952 - 1955	Brooklyn Law School J.D. degree
Bar:	1956	New York
Experience:	1956 - 1957	Sole practitioner Hicksville, New York
	1957 - 1962	Assistant Attorney General State of New York
	1963 - 1971	Law Clerk to Hon. Albert A. Oppido Justice of the Supreme Court State of New York
	1971 - 1974	Executive Assistant District Attorney County of Nassau
	1975 - 1978	Chief Counsel Joint Bar Association Grievance Committee 10th Judicial District
	1979 - 1983	District Court Judge Nassau County
	1984 - present	Justice, Supreme Court of the State of New York
Office:	100 Supreme Court Drive Mineola, New York 11501 516 535-2883	
Home:	204 Country Club Drive Manhasset, New York 11030	

To be United States District Judge for the Eastern District of New York

SENATE QUESTIONNAIRE

1. Full name: Robert Roberto, Jr.

2. Address: Residence/ 204 Country Club Drive
Manhasset, N.Y. 11030

Office/ Supreme Court
100 Supreme Court Drive
Mineola, N.Y. 11501

3. Date and place of birth: June 28, 1930
New York, New York

4. Marital Status: (include maiden name of wife). List spouse's occupation, employer's name and business address(es).

Married - July 5, 1958
Norma S. Roberto (Spinzia) Self-employed/travel agent

5. Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.

Florida Southern College 1948-1949
Transferred to Adelphi University
1949-1952 B.A. Degree

Brooklyn Law School June 1952/B.A. Degree
June 1955/J.D. Degree

6. Employment Record: List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including farms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.

1952	Village Bath Club/Lifeguard, summer employment
1953	Village Bath Club/Lifeguard, summer employment
1954-1955	Rao & Leggio, Esq./Law Clerk
1956	Allstate Insurance Co./Claims
1957-1962	State of N.Y., Dept. of Law/Asst. Attorney General
1957-1978	Roberto Insurance Service/Owner
1962-1971	State of N.Y., County Court & Supreme Court/Law Clerk to Hon. Albert A. Oppido
1971-1974	County of Nassau, Office of District Attorney/Executive Asst. District Attorney
1974-1978	State of N.Y., Supreme Court Appellate Division/Chief Counsel, Joint Bar Association Grievance Committee, 10th Judicial District
1978-1983	State of N.Y., Nassau County/District Court Judge
1984-date	State of N.Y./Justice of the Supreme Court, 2nd Dept.
1982-1985 1987	Bar Association, Nassau County/Director

6. Continued

1984-date	Columbian Lawyers Association, Nassau County/Director
1978-date	Nassau Lawyers Association of Long Island/Director
1962	Benevolent & Protective Order of Elks/Exhaulted Ruler
1967	Kiwanis Club of Roslyn/President
1979-1982	Manhasset Youth Counsel/President
1980-1981	Nassau County Task Force on Vandalism/Chairman

7. Military Service: Have you had any military service?

NO

8. Honors and Awards: List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.

NONE

9. Bar Associations: List all bar associations, legal or judicial-related committees or conferences of which you are or have been a member and give the titles and dates of any offices which you have held in such groups.

- Member & Director of the Nassau County Bar Association
- Member & Director of the Colombian Lawyers Association of Nassau County
- Member of New York State Trial Lawyers Association
- Judicial Advisor to Nassau Academy of Law
- Lecturer, Nassau Academy of Law
- Member & Director, Nassau Lawyers Association of Long Island

10. Other Memberships: List all organizations to which you belong that are active in lobbying before public bodies. Please list all other organizations to which you belong.

- Elks
- Kiwanis
- Sons of Italy
- Member of St. Mary's Parish, Manhasset, N.Y.

11. Court Admission: List all courts in which you have been admitted to practice, with dates of admission and lapses if any such memberships lapsed. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.

- All courts of the State of New York - 1956
- Federal Eastern & Southern Districts - 1959
- Supreme Court of the U.S. - 1960

12. Published Writings: List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.

12. **Continued/answer**

Task Force on Vandalism, final report July 1981.

13. Health: What is the present state of your health? List the date of your last physical examination.

Excellent. September 29, 1987.

14. Judicial Office: State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

I now hold the office of Justice of the Supreme Court of the State of New York. I was elected to a 14-year term commencing January 1984; my term expires December 1997. The Supreme Court is a court of unlimited original jurisdiction with both jury and non-jury cases. The court does not exercise its criminal jurisdiction.

1979-1983: I was a District Court Judge of Nassau County. The District Court is a court of limited jurisdiction of $15,000 in civil matters, unlimited jurisdiction in summary proceedings and misdemeanor criminal trial jurisdiction. The cases are both jury and non-jury. I was appointed by the County Executive for a one-year term and then elected for a six-year term.

15. Citations: If you are or have been a judge, provide citations for: (1) the ten most significant opinions you have written; (2) a short summary of all appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings; and (3) significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions.

- The only opinion that I have written that has officially been reported is Wegman v Wegman, 112 Misc2d 716.

- Sosnowski v Kolovas, 127 AD2d 756 / This case involved an issue of ownership of a motor vehicle vis a vis insurance coverage. After a non-jury hearing I determined the issue of whether the car had been transferred. On appeal the Appellate Division reversed and remanded the matter back for a jury trial on this issue stating that this was properly a factual issue to be determined by jury. A jury, after trial, made the same determination as I did.

- Fein v City of Long Beach, 123 AD2d 662 / On a motion by the municipality to dismiss based upon a failure to comply with a prior written notice of the defect, I denied the motion based upon the municipality having created the defect (removal of the top of a parking meter leaving only the pole). After a jury verdict in favor of plaintiff, the defendant appealed. The Appellate Division reversed stating there was no proof that the municipality created the condition.

- Stoop v Kurtz, 121 AD2d 529 / After trial the jury returned a defendant's verdict. On appeal the matter was remitted for a new trial on the basis that jury instruction did not sufficiently distinguish between two theories of liability and interest of justice required a new trial. A defendant's verdict was returned after re-trial.

- Galiani v Hofstra University, 118 AD2d 572 / In an Article 78 proceeding to review a decision by Hofstra University to impose a suspension of a student I granted the petition and annulled the suspension on the basis of a denial of due process and that the penalty imposed was excessive. On appeal the Appellate Division reversed stating that there had been no denial of due process and the dedicion of the University was not arbitrary or capricious.

15. Continued

- Matter of Gelderman, 111 AD2d 332 / This matter involved a subpoena issued by the petitioner in connection with Administrative Hearing. The state sought to quash the subpoena which I denied. On appeal the Appellate Division reversed stating that the material sought was improper and constituted a "fishing expedition."

- Wald v Wald, 119 AD2d 569 - Reversed in Part / In a matrimonial action this Court granted husband's motion for reverse summary judgment but denied wife's motion for certain alimony arrears. On appeal summary judgment affirmed but denial of judgment for arrears reversed. The Appellate Court found that wife's application for arrears should have been determined and not dismissed.

- Riscicci v Homayoon, 122 AD2d 260 / In a medical malpractice action on the eve of trial certain discovery was sought and also a protective order. The Appellate Division affirmed denial of protective order on notice to admit but reversed that portion of order which denied further depositions.

15. (3) None

16. Public Office: State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chrono) any unsuccessful candidacies for elective public office.

January 1957 - December 1962
Assistant Attorney General
State of New York
Appointed

January 1963 - January 1971
Law Clerk to Hon. Albert A. Oppido
State of New York/Supreme Court & County Court
Appointed

January 1971 - December 1974
Executive Asst. District Attorney
County of Nassau
Appointed

January 1975 - December 1978
Chief Counsel Joint Bar Assoc.
Grievance Committee 10th
Judicial District
Appointed

Unsuccessful candidacies: None

17. Legal Career: a) Describe chronologically your law practice and experience after graduation from law school including:

1. Whether you served as clerk to a judge, and if so, the name of the judge, the court, and the dates of the period you were a clerk:

   I served as a law clerk to Hon. Albert A. Oppido, 1962-1971, in the County Court, Nassau County and the Supreme Court, State of New York.

2. Whether you practiced alone, and if so, the addresses and dates:

   I practiced alone from 1957-1971 part time in non-litigated matters at 115 North Broadway, Hicksville, N.Y., and from my home.

3. The dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each:

17. **Continued**

3. (ANSWER) 1954-1955/Rao & Liggio, Esqs.
Lexington Ave., N.Y., N.Y.
Law Clerk

1956/Allstate Insurance Co.
Main Street, Flushing, N.Y.
Claims Dept.

1957-1962/State of New York
Dept. of Law
80 Centre Street, N.Y., N.Y.
Asst. Attorney General

1962-1971/State of New York
County & Supreme Courts
Law Clerk to Hon. Albert A. Oppido

1971-1974/County of Nassau
Office of District Attorney
County Court House, Mineola, N.Y.
Executive Asst. D.A.

1974-1978/State of New York
Supreme Court, Appellate Div.
Brooklyn, N.Y.
Chief Counsel Joint Bar Assoc.
Grievance Committee 10th J.D.

1978-1983/State of New York
District Court
262 Old Country Road
Mineola, N.Y.
Judge

1984-date/State of New York
Supreme Court
100 Supreme Court Drive
Mineola, N.Y.
Justice

Legal Career: b) 1. What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?

2. Describe your typical former clients, and mention the areas, if any, in which you have specialized.

In private practice I handled real estate and commercial matters. I did not appear in court on behalf of clients.

As Assistant Attorney General of the State of New York I represented the Labor Dept. of the State of New York. I worked on appeals and enforcement of the Labor Law including criminal prosecutions.

As Law clerk to Justice Oppido in County Court I assisted the judge in criminal hearings and trials. In the Supreme Court I assisted in civil matters including motions, hearings and trials, both jury and non-jury.

17. Continued

Legal Career: b) 1. & 2. cont'd

As Executive Assistant District Attorney of Nassau County I was in charge of the office which included 101 A.D.A.'s. I was supervisor of the following bureaus: Rackets, Vice, Drug, Economic Crime, Grand Jury, Trial and Complaint.

As Chief Counsel to the Joint Bar Association Grievance Committee I was in charge of all investigation and prosecution of complaints against lawyers in the 10th Judicial District (Nassau & Suffolk Counties).

As a District Court Judge I presided in civil trials with a jurisdictional limitation of $15,000 and criminal trials and hearings, jury and non-jury. From time to time I was appointed an acting County Court Judge.

The Supreme Court is a court of unlimited original jurisdiction. As a Justice I preside over civil trials, jury and non-jury. The court does not exercise its criminal jurisdiction.

Legal Career: c) 1. Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates.

I appeared in court frequently.

2. What percentage of these appearances was in:
a) federal courts: 5%
b) state courts of record: 95%
c) other courts: -0-

3. What percentage of your litigation was:
a) civil: 50%
b) criminal: 50%

4. State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

Over 200 cases as sole counsel, chief counsel or judge.

5. What percentage of these trials was:
a) jury: 50%
b) non-jury: 50%

18. Litigation: Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

(a) the date of representation;
(b) the name of the court and the name of the judge or judges before whom the case was litigated; and
(c) the individual name, address, and telephone numbers of co-counsel for each of the other parties.

18. Continued/answer

When I was in private practice I did not represent clients in litigated matters.

As Chief Counsel to the Joint Bar Association Grievance Committee (1974-78) I supervised the investigation of over 2000 complaints against lawyers and was the attorney of record in over 50 disciplinary proceedings commenced in the New York State Supreme Court Appellate Division, Second Department. The following are reported cases of disciplinary proceedings; all non-reported cases remain confidential:

Matter of Maclachlan	62 App Div2nd 413
Matter of Kurtz	61 App Div2nd 531
Matter of Mackey	61 App Div2nd 262
Matter of Hartman	61 App Div2nd 194
Matter of Mozer	60 App Div2nd 702
Matter of Verdile	59 App Div2nd 97
Matter of Stubenhaus	59 App Div2nd 96
Matter of Smith	59 App Div2nd 39
Matter of Cristenfeld	58 App Div2nd 505
Matter of Bogaten	56 App Div2nd 430
Matter of Lang	56 App Div2nd 183
Matter of Wood	56 App Div2nd 586
Matter of Lombardi	56 App Div2nd 101
Matter of King	54 App Div2nd 88
Matter of Guttman	54 App Div2nd 70
Matter of Powsner	53 App Div2nd 270
Matter of Smith	53 App Div2nd 273
Matter of Lagnese	53 App Div2nd 162
Matter of Giordano	52 App Div2nd 492
Matter of Raymond	50 App Div2nd 400

In 1957 as Assistant Attorney General of the State of New York I represented the State Labor Department on an appeal in the New York State Court of Appeals which was reported in N.H. Lyons & Co. v Corsi, 3 NY2nd 60.

The case involved the constitutionality of the State minimum wage as applied to the hotel industry. The decision upheld the Labor Department's right to enforce the minimum wage law.

18. Continued/answer

The following are significant litigated matters which I presided over as a Justice of the Supreme Court of the State of New York:

POSILLICO v POSILLICO   2/21/85   Suffolk / Index #4417/82

Contested matrimonial involving relatively short marriage and disposition of extensive investments holdings.

Stein, Zauderer, Ellenhorn
Friedman & Kaplan
875 3rd Ave.
New York, NY

Siller & Gazian
217 Broadway
New York, NY

PENN v TOWN OF OYSTER BAY   8/6/84

Negligence action which raised questions relating to alternative theories of how accident occurred and whether court in its charge to jury should permit alternative interrogatories on jury verdict questionnaire.

Gewurz & Gewurz
2004 Newbridge Rd.
Bellmore, NY

Newman, Schlau, Fitch
& Burns

GROETEMAN v NORTH SHORE UNIV. HOSP. & DR. STEPHEN LEON   12/16/86   Index #7457/82

Medical malpractice trial involving wrongful death of plaintiff allegedly based upon failure to properly diagnose breast cancer.

David Perelman
291 Broadway
New York, NY

Bower & Gardner
415 Madison Ave.
New York, NY

Furey & Furey
600 Front St.
Hempstead, NY

HORNBERGER v ST. FRANCIS HOSP., et al.   2/13/87   Index #14422/82

Medical malpractice case involving alleged failure to properly treat plaintiff.

Geoghan & Tutrone
747 3rd Ave.
New York, NY

Martin, Clearwater & Bell
220 East 42nd St.
New York, NY

Montfort, Healy
163 Mineola Blvd.
Mineola, NY

TYLIM INVESTMENT CORP. v RIVOLI DRUGS, INC.   3/4/86   Index #554/84

Case involving the alleged breach of a restrictive covenant in commercial shopping center lease.

Dollinger, Gonski & Grossman
of Counsel to Proskauer, Rose
Goetz & Mendelsohn
500 Old Country Rd.
Garden City, NY

Whitman & Ransom
522 Fifth Ave.
New York, NY

SOSNOWSKI v KOLOVOS, et al.   9/86   Index #13989/84

Hearing on limited issue of ownership of automobile and insurance coverage.

Jacob D. Fuchsberg
500 Fifth Ave.
New York, NY

Martin, Fallon & Mule
100 East Carver St.
Huntington, NY

Rivkin, Leff,
et al.
EAB Plaza
Uniondale, NY

18. **Continued**

EBBECKE v BAY VIEW ENVIRONMENTAL SERVICE, INC. & GRUMMAN AEROSPACE CORP.
5/20/87
Index #5139/85

Negligence action involving lack of supervision and improper handling of toxic waste

Henry Santis
1010 Franklin Ave.
Garden City, NY

Sanders, Sanders, Block & Byrne
332 Willis Ave.
Mineola, NY

Gervais, deCicco, et al.
233 7th St.
Garden City, NY

WEGMAN v WEGMAN 112 Misc2d 716

Marital action involving complex issues of valuation and classification of property

Jerome Halperin
150 East 58th St.
New York, NY

Taylor, Atkins & Ostrow
200 Garden City Plaza
Garden City, NY

OLIVER v RAMPIN 8/20/87 Index #13778/85

Auto accident case involving threshold issue of whether plaintiff suffered "serious injury" under no fault insurance law

Thomas F. Liotti
507 Westbury Ave.
Carle Place, NY

Martin, Fallon & Mule
100 East Carver St.
Huntington, NY

WALDHOLZ v COUNTY OF NASSAU 12/11/86 Index #23614/83

Negligence action involving unique theory of liability for injuries suffered as a result of foster child's alleged rape of an infant who was resident in foster child's home

Albert Fiorella
1565 Franklin Ave.
Mineola, NY

Edward McCabe
Nassau County Attorney's Office
1 West Street
Mineola, NY

19. Legal Activities: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation in the matter. (Note: as to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

During the period 1971-1973 I represented the Nassau County District Attorneys Office in a National District Attorneys Economic Crime Project. District Attorney officers from all over the country met, exchanged ideas and information and cooperated in investigations and prosecutions of economic crimes.

II. FINANCIAL DATA

1. List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients, or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.

I participate in a N.Y.S. Deferred Compensation Plan which I started in May 1987. As of June 30, 1987, the value was $985.11. I contribute 7% of my salary to the plan.

I am a member of the N.Y.S. Retirement System which is a non-contributory plan. I have been a member since 1957. I will be eligible to receive benefits depending on the option taken, based upon average 3 years' salary and years of service.

I participate in an I.R.A. with Smith Barney & Co. Current account balance $40,000 benefits payable between ages 59-1/2 to 70 years of age.

I have not made any arrangements concerning these programs.

2. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.

I do not anticipate any potential conflict of interest in the position to which I have been nominated; however, I will take any steps necessary, including divestiture to resolve any potential conflict of interest. In addition, I will carefully abide by all the rules of the American Bar Association and of the Judicial Conference to insure against a conflict of interest or any appearance of a conflict of interest.

There are no categories of litigation that are likely to present potential conflicts of interest. The only financial arrangements that would be likely to present a potential conflict of interest is stock ownership. In that regard I would, if necessary, create a blind trust or divest myself of ownership or recuse myself after full disclosure.

3. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain. NO

4. List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding $500 or more (if you prefer to do so, copies of the Executive Personnel Financial Disclosure Report, required by the Ethics in Government Act of 1978, may be substituted here).

Executive Personnel Financial Disclosure Report substituted.

5. Please complete the attached financial net worth statement in detail (add schedules as called for). Net worth statement attached.

6. Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

For 12 years prior to 1971 I was elected a Republican committeeman in the Manhasset area. As a committeeman I was involved in political campaigns in general. Upon entering the office of the District Attorney (1971) I resigned as committeeman and did not get involved in political campaigns except for my own election as a Judge of the District Court and Supreme Court.

III. GENERAL (PUBLIC)

1. An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

1979-1982 / I was the founding President of the Manhasset Youth Council. During that period I spent at least 4 hours each week. The council was organized to assist the young people of the community in employment, cultural education, drug prevention and rehabilitation and recreation.

1980-1982 / I served as chairman of the Nassau County Task Force on Vandalism. I spent at least 2 hours each week. The Task Force consisted of educators, youth groups, community and public officials and law enforcement agencies.

I have participated in a Nassau County Bar Association Moot Court competition. In 1984, 1985 and 1986 I presided at moot court trials for high school students in Nassau County.

2. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion. Do you currently belong, or have you belonged, to any organization which discriminates -- through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What have you done to try to change these policies?

The only organization that I have been a member of which discriminated in any way were the Elks and Kiwanis in that women were not permitted to be members. I have consistently advocated and voted to have open membership.

3. Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so. did it recommend your nomination? Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and interviews in which you participated).

Senator D'Amato has a Judicial Nomination Screening Committee chaired by Paul Windels, Esq. I met with that committee and it is my understanding that it recommended me for appointment to the Federal District Court, New York Eastern District. I was interviewed by the Justice Department, the F.B.I. and the American Bar Association's Standing Committee on Federal Judiciary. I have completed and submitted questionnaires and copies of my written opinions. I have supplied all information requested.

4. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as seeking any express or implied assurances concerning your position on such case, issue or question? If so, please explain fully.

No.

5. Please discuss your views on the following criticism involving "judicial activism."

The role of the Federal judiciary within the Federal government, and within society generally, has become the subject of increasing controversy in recent years. It has become the target of both popular and academic criticism that alleges that the judicial branch has usurped many of the prerogatives of other branches and levels of government. Some of the characteristics of this "judicial activism" have been said to include:

a. A tendency by the judiciary toward problem-solution rather than grievance-resolution;

b. A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;

c. A tendency by the judiciary to impose broad, affirmative duties upon governments and society;

d. A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and

e. A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.

There is no question that the judiciary has been the subject of criticism as a result of its alleged "judicial activism." To effectively comment on "judicial activism" would best be accomplished by reference to a particular set of facts or a particular case.

The argument that the court should not interfere with the majority's legitimate right to govern through their elected representatives is balanced by the court's obligation to protect the rights of individuals. The judiciary must be independent and strong but its power should be confined to the authority given in the constitution and laws.

The majority through their elected representatives have a right to govern, but the majority does not have the right or power to infringe on the individual's rights of liberty and equality provided in the constitution. The court has an obligation to protect those individual rights. To fulfill that obligation the court must rely on statutory and precedential authority and should not be guided solely by a judge's personal will or private view.

It is imperative that the judiciary limit itself to hearing cases in which there are real parties in interest, a particular grievance, which is ripe for resolution.

The judiciary interprets the law, the power to make and execute those laws is vested in the elective branches of government. A judiciary that attempts to impose its view upon the majority without regard for its constitutional limitations, infringes on the rights and duties of the elective branches of government. The exercise of such power, within the constitutional limitations, should be used sparingly and only to protect individual rights which are provided for in the constitution.

The judiciary should attempt to be neither liberal or conservative; its function is to safeguard the constitution, to interpret the law and apply that law to a particular set of facts as determined by the court or jury. If the judiciary remains within these boundaries, it will fulfill its responsibility under the constitution and laws.

SF 278 (Rev. [illegible])
FPM Chapter 734
U.S. Office of Personnel Management

Financial Disclosure Report

Form Approved
OMB No. [illegible]

Page 1

Reporting Status *(Check Appropriate Box)* ☐ Incumbent ☒ New Entrant, Nominee, or Candidate ☐ Termination Filer	Agency Use Only	OGE Use Only	Date of Appointment, Candidacy, Election or Nomination *(Mo., Day, Yr.)*	Termination Date *(If Applicable) (Month, Day, Year)*

Reporting Individual's Name	Last Name ROBERTO	First Name and Middle Initial ROBERT NMI
Position for Which Filing	Title of Position FEDERAL DISTRICT COURT JUDGE	Department or Agency *(If Applicable)*
Location of Present Office	Address *(Number, Street, City, State and ZIP Code)* 100 SUPREME COURT DRIVE, MINEOLA, NY 11501	Telephone No. *(Include Area Code)* (516) 535-2883/84/2655
Position(s) Held With the Federal Government During the Preceding 12 Months *(If Not Same as Above)*	Title of Position(s) and Date(s) Held None	
Presidential Nominees Subject to Senate Confirmation	Name of Congressional Committee Considering Nomination SENATE JUDICIARY COMMITTEE	Do You Intend to Create a Qualified Diversified Trust? ☐ Yes ☒ No
Certification I CERTIFY that the statements I have made on this form and all attached schedules are true, complete and correct to the best of my knowledge and belief.	Signature of Reporting Individual Robert Roberto	Date *(Month, Day, Year)* 11.27.87
Other Review **(If desired by agency)**	Signature of Other Reviewer	Date *(Month, Day, Year)*
Agency Ethics Official's Opinion The information contained in this report discloses no conflict of interest under applicable laws and regulations.	Signature of Designated Agency Ethics Official/Reviewing Official	Date *(Month, Day, Year)*
Office of Government Ethics Use Only	Signature	Date *(Month, Day, Year)*

Reporting Periods

Incumbents: Complete Schedules A, B, C, and Part I of D. The reporting period is the preceding calendar year except for Part II of Schedule C and Part I of Schedule D where you must also include any positions held or agreements or arrangements made from the beginning of the filing year until the date you file.

Termination Filers: Complete Schedules A, B, C, and Part I of D. The reporting period begins at the end of the period covered by your previous filing and ends at the date of termination.

Nominees, New Entrants and Candidates for President and Vice President: Complete Schedules A, C, and D. (Candidates do not file Part II of Schedule D.)

- **Schedule A**—The reporting period for income (BLOCK C) and Transactions Test (BLOCK D) is the preceding calendar year and the current calendar year up to the date of filing. Value assets in BLOCK B as of any date you choose that is within 31 days of the date of filing.
- **Schedule C, Part I** (Liabilities)—The reporting period is the preceding calendar year and the current calendar year up to any date you choose that is within 31 days of the date of filing.
- **Schedule C, Part II** (Agreements and Arrangements)—Show any agreements or arrangements as of the date of filing.
- **Schedule D**—The reporting period is the preceding two calendar years and the current calendar year up to the date of filing.

Comments of Reviewing Officials *(If additional space is required, use the reverse side of this sheet)*

(Check box if comments are continued on the reverse side) ☐

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278-108

NSN 7540-01-070-8444

SF 278 (Rev. [illegible])
FPM Chapter 734
U.S. Office of Personnel Management

Form Approved
OMB No. [illegible]

Reporting Individual's Name ROBERT ROBERTO, JR.	**Assets and Income**	Page Number 1	Schedule A

All Filers. In BLOCK A report (a) the identity of each asset held for the production of income at the close of the reporting period which had a fair market value exceeding $1000 and (b) any other asset or source of income which generated over $100 in income during the reporting period. This includes but is not limited to employers, stocks, bonds, tax shelters, bank accounts, real property, mutual funds, pensions, IRA assets, assets of certain trusts, commodities futures, personal businesses and partnership interests. Exclude your personal residence unless you rent it out. See instructions for rules on bank accounts and complex holdings.

All Filers: In BLOCK B report the value of each asset listed in BLOCK A which had a fair market value exceeding $1000 at the close of the reporting period.

All Filers: In BLOCK C report the type and amount of income exceeding $100 or more received from the assets and other sources of income listed in BLOCK A. You must report the actual amount of any income not of a type specifically noted below. You need not report the actual amount of your spouse's earned income, only the source in BLOCK A. You may not check "qualified trust" unless you have a blind trust which has been specifically approved by the Office of Government Ethics. If you, your spouse or dependent child are the beneficiary of a trust which no one of you created and has no knowledge of the assets, refer to the instructions to see if it qualifies as an "excepted trust." If "none" (or less than $101) is checked under Category of Amount of Income, no other entries need be made in BLOCK C for that item.

Incumbents and Termination Filers only: In BLOCK D, for any real property, stocks, bonds, commodities futures and other securities listed in BLOCK A, did you purchase, sell, or exchange the item during the reporting period for a value that exceeds $1000?

	BLOCK A Assets & Income Sources	BLOCK B Valuation of Assets							BLOCK C Income																	BLOCK D Transactions Test	
	Identify each asset and income source of yours, your spouse(S) and your dependent child (DC). NONE ☐	Category of Value (X)							Type of Income (X)							Category of Amount of Income (X)										If yes, complete Schd. B Part I for those assets including those sold for a loss.	
		None (or less than $1001)	$1,001-$5,000	$5,001-$15,000	$15,001-$50,000	$50,001-$100,000	$100,001-$250,000	Over $250,000	Dividends	Rent	Interest	Capital Gains	Excepted Trust	Qualified Trust	Other (Specify Type)	None (or less than $101)	$101-$1,000	$1,001-$2,500	$2,501-$5,000	$5,001-$15,000	$15,001-$50,000	$50,001-$100,000	Over $100,000	Actual Amount Only if "Other" Specified	Date (Mo., Day, Yr.) Only if Honoraria	YES	NO
S or DC Examples	X Y Z Common				x				x									x								x	
	Doe Jones & Smith, Hometown, USA			x											ptnrshp income									$50,000			
1	Alza Common Stock				x											x											
2	Apache Pete Co. Deposit Unit		x													x											
3	Church Fried Chicken Common Stock			x					x								x										
4	Squibb Co. Common Stock				x				x								x										
5	USX Common Stock						x		x										x								
6	N.Y.S. Dorm Bond			x							x							x									
7	Unit Tax Ex Series 82				x						x							x									
8	Unit Tax Ex Series 99				x						x							x									
9	Vantage Cash/Ready Asset						x				x									x							
10	American Cap Co. Common Stock			x							x						x										

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276-208

SF 278 [illegible]
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U.S. Office of Personnel Management

Form Approved
OMB No. [illegible]

Reporting Individual's Name ROBERT ROBERTO, JR.	Assets and Income	Page Number	2	Schedule A

All Filers: In BLOCK A report (a) the identity of each asset held for the production of income at the close of the reporting period which had a fair market value exceeding $1000 and (b) any other asset or source of income which generated over $100 in income during the reporting period. This includes but is not limited to employers, stocks, bonds, tax shelters, bank accounts, real property, mutual funds, pensions, IRA assets, assets of certain trusts, commodities futures, personal businesses and partnership interests. Exclude your personal residence unless you rent it out. See instructions for rules on bank accounts and complex holdings.

All Filers: In BLOCK B report the value of each asset listed in BLOCK A which had a fair market value exceeding $1000 at the close of the reporting period.

All Filers: In BLOCK C report the type and amount of income exceeding $100 or more received from the assets and other sources of income listed in BLOCK A. You must report the actual amount of any income not of a type specifically noted below. You need not report the actual amount of your spouse's earned income, only the source in BLOCK A. You may not check "qualified trust" unless you have a blind trust which has been specifically approved by the Office of Government Ethics. If you, your spouse or dependent child are the beneficiary of a trust which no one of you created and has no knowledge of the assets, refer to the instructions to see if it qualifies as an "excepted trust." If "none" (or less than $101) is checked under Category of Amount of Income, no other entries need be made in BLOCK C for that item.

Incumbents and Termination Filers only: In BLOCK D, for any real property, stocks, bonds, commodities futures and other securities listed in BLOCK A, did you purchase, sell, or exchange the item during the reporting period for a value that exceeds $1000?

▼

	BLOCK A Assets & Income Sources		BLOCK B Valuation of Assets							BLOCK C Income																	BLOCK D Transactions Test	
	Identify each asset and income source of yours, your spouse(S) and your dependent child (DC). NONE ☐		Category of Value (X)							Type of Income (X)							Category of Amount of Income (X)										If yes, complete Sched. B Part I for these assets including those sold for a loss.	
S or DC			None (or less than $1001)	$1,001-$5,000	$5,001-$15,000	$15,001-$50,000	$50,001-$100,000	$100,001-$250,000	Over $250,000	Dividends	Rent	Interest	Capital Gains	Excepted Trust	Qualified Trust	Other (Specify Type)	None (or less than $101)	$101-$1,000	$1,001-$2,500	$2,501-$5,000	$5,001-$15,000	$15,001-$50,000	$50,001-$100,000	Over $100,000	Actual Amount Only if "Other" Specified	Date (Mo., Day, Yr.) Only if Honoraria	YES	NO
	Examples	X Y Z Common				x				x									x								x	
		Doe Jones & Smith, Hometown, USA			x											partnership income									$50,000			
1		American T&T Common Stock				x				x									x									
2		Baxter Tran Common Stock			x					x								x										
3		Bell Atlantic Common Stock				x				x								x										
4		Bell South Common Stock				x				x									x									
5		Dayton P&L Common Stock			x					x								x										
6		General P.U. Common Stock			x													x										
7		Gulf State Util. Common Stock		x													x											
8		Lorimar Tel. Common Stock			x												x											
9		Marion Lab Common Stock					x			x								x										
10		NYNEX Common Stock				x												x										

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SF 278 [illegible]
[illegible]
U.S. Office of Personnel Management

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Reporting Individual's Name ROBERT ROBERTO, JR.	**Assets and Income**	Page Number 3	Schedule A

All Filers: In BLOCK A report (a) the identity of each asset held for the production of income at the close of the reporting period which had a fair market value exceeding $1000 and (b) any other asset or source of income which generated over $100 in income during the reporting period. This includes but is not limited to employers, stocks, bonds, tax shelters, bank accounts, real property, mutual funds, pensions, IRA assets, assets of certain trusts, commodities futures, personal businesses and partnership interests. Exclude your personal residence unless you rent it out. See instructions for rules on bank accounts and complex holdings.

All Filers: In BLOCK B report the value of each asset listed in BLOCK A which had a fair market value exceeding $1000 at the close of the reporting period.

All Filers: In BLOCK C report the type and amount of income exceeding $100 or more received from the assets and other sources of income listed in BLOCK A. You must report the **actual amount** of any income not of a type specifically noted below. You need not report the actual amount of your spouse's earned income, only the source in BLOCK A. You may not check "qualified trust" unless you have a blind trust which has been specifically approved by the Office of Government Ethics. If you, your spouse or dependent child are the beneficiary of a trust which no one of you created and has no knowledge of the assets, refer to the instructions to see if it qualifies as an "excepted trust." If "none" (or less than $101) is checked under Category of Amount of Income, no other entries need be made in BLOCK C for that item.

Incumbents and Termination Filers only: In BLOCK D, for any real property, stocks, bonds, commodities futures and other securities listed in BLOCK A, did you purchase, sell, or exchange the item during the reporting period for a value that exceeds $1000?

BLOCK A Assets & Income Sources		BLOCK B Valuation of Assets: Category of Value (X)							BLOCK C Income: Type of Income (X)							BLOCK C Income: Category of Amount of Income (X)										BLOCK D Transactions Test: If yes, complete Sch. B Part I for these assets including those sold for a loss.	
S or DC	Identify each asset and income source of yours, your spouse(S) and your dependent child (DC). NONE ☐	None (or less than $1001)	$1,001-$5,000	$5,001-$15,000	$15,001-$50,000	$50,001-$100,000	$100,001-$250,000	Over $250,000	Dividends	Rent	Interest	Capital Gains	Excepted Trust	Qualified Trust	Other (Specify Type)	None (or less than $101)	$101-$1,000	$1,001-$2,500	$2,501-$5,000	$5,001-$15,000	$15,001-$50,000	$50,001-$100,000	Over $100,000	Actual Amount Only if "Other" Specified	Date (Mo., Day, Yr.) Only if Honoraria	YES	NO
Examples	X Y Z Common				X				X									X								X	
Examples	Doe Jones & Smith, Hometown, USA			X											ptnrshp income									$50,000			
1	Pacific Telesis Common Stock			X					X								X										
2	Southwest Bell Common Stock			X					X								X										
3	UpJohn Co. Common Stock			X					X								X										
4	Zayre Corp. Common Stock			X					X								X										
5	American Home Products Common Stock				X				X								X										
6	N.Y.S. Dorm bond			X							X						X										
7	N.Y.C. Bond MAC			X							X							X									
8	N.Y.C. MAC bond			X							X						X										
9	N.Y.S. ERDA Bond			X							X						X										
10	Merrill Lynch CMA			X							X						X										

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278-309

SF 278 Rev. 1/86
FPM Chapter 734
U.S. Office of Personnel Management

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OMB No. [illegible]

Page Number		Schedule D

Reporting Individual's Name

ROBERT ROBERTO, JR.

Part I
Positions Held Outside U.S. Government

All Filers: Report any positions held during the applicable reporting period. Positions include but are not limited to those of an officer, director, trustee, general partner, proprietor, representative, employee or consultant of any corporation, firm, partnership, or other business enterprise or any non-profit organization or educational institution. Exclude positions with religious, social, fraternal, or political entities or those solely of an honorary nature.

NONE ☐

	Organization (Name and Address)	Type of Organization	Position Held	From (Mo., Yr.)	To (Mo., Yr.)
Examples:	Nat'l Assn. of Rock Collectors, NY, NY	Non-profit education	President	6/82	6/83
	Doe Jones & Smith, Hometown, USA	Law firm	Partner	7/76	11/83
	STATE OF NEW YORK	GOVERNMENT	JUSTICE OF SUPREME COURT	1984	present

Part II
Compensation In Excess Of $5000 Paid by One Source

Nominees and New Entrants only: Report sources of such compensation received by you or your business affiliation for services directly provided by you during the reporting period. This includes the names of clients and customers of any corporation, firm, partnership or other business enterprise, or any nonprofit organization, when you directly provided the services generating a fee or payment of more than $5,000. You need not report the U.S. Government as a source.

NONE ☒

	Source (Name and Address)	Brief Description of Duties
Examples:	Doe Jones & Smith, Hometown, USA	Legal services
	Metro University (client of Doe Jones & Smith) Hometown, USA	Legal services in connection with university construction

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SF 278 (Rev. 1/85)
FPM Chapter 734
U.S. Office of Personnel Management

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OMB No. [illegible]

Reporting Individual's Name ROBERT ROBERTO, JR.	**Assets and Income**	Page Number 5	Schedule A

All Filers: In BLOCK A report (a) the identity of each asset held for the production of income at the close of the reporting period which had a fair market value exceeding $1000 and (b) any other asset or source of income which generated over $100 in income during the reporting period. This includes but is not limited to employers, stocks, bonds, tax shelters, bank accounts, real property, mutual funds, pensions, IRA assets, assets of certain trusts, commodities futures, personal businesses and partnership interests. Exclude your personal residence unless you rent it out. See instructions for rules on bank accounts and complex holdings.

All Filers: In BLOCK B report the value of each asset listed in BLOCK A which had a fair market value exceeding $1000 at the close of the reporting period.

All Filers: In BLOCK C report the type and amount of income exceeding $100 or more received from the assets and other sources of income listed in BLOCK A. You must report the **actual amount** of any income not of a type specifically noted below. You need not report the actual amount of your spouse's earned income, only the source in BLOCK A. You may not check "qualified trust" unless you have a blind trust which has been specifically approved by the Office of Government Ethics. If you, your spouse or dependent child are the beneficiary of a trust which no one of you created and has no knowledge of the assets, refer to the instructions to see if it qualifies as an "excepted trust." If "none" (or less than $101) is checked under Category of Amount of Income, no other entries need be made in BLOCK C for that item.

Incumbents and Termination Filers only: In BLOCK D, for any real property, stocks, bonds, commodities futures and other securities listed in BLOCK A, did you purchase, sell, or exchange the item during the reporting period for a value that exceeds $1000?

▼

	BLOCK A Assets & Income Sources	BLOCK B Valuation of Assets							BLOCK C Income																	BLOCK D Transactions Test	
	Identify each asset and income source of yours, your spouse(S) and your dependent child (DC). NONE ☐	Category of Value (X)							Type of Income (X)						Other (Specify Type)	Category of Amount of Income (X)								Actual Amount Only if "Other" Specified	Date (Mo., Day, Yr.) Only if Honoraria	If yes, complete Sch. B Part I for these assets including those sold for a loss.	
		None (or less than $1001)	$1,001-$5,000	$5,001-$15,000	$15,001-$50,000	$50,001-$100,000	$100,001-$250,000	Over $250,000	Dividends	Rent	Interest	Capital Gains	Excepted Trust	Qualified Trust		None (or less than $101)	$101-$1,000	$1,001-$2,500	$2,501-$5,000	$5,001-$15,000	$15,001-$50,000	$50,001-$100,000	Over $100,000			YES	NO
S (or DC) Examples	X Y Z Common				x				x									x								x	
	Doe Jones & Smith, Hometown, USA			x											ptnrshp income									$50,000			
1	State of NY / salary	x													Salary							x					
2																											
3																											
4																											
5																											
6																											
7																											
8																											
9																											
10																											

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FPM Chapter 734
U.S. Office of Personnel Management

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OMB No. [illegible]

Reporting Individual's Name

ROBERT ROBERTO, JR.

Page Number		Schedule B

Part I
Transactions

Incumbents and Termination Filers only: Report any purchase, sale or exchange by you, your spouse or dependent child during the reporting period of any real property, stocks, bonds, commodities futures and other securities when the amount of the transaction exceeded $1,000. Include transactions that resulted in a loss. Do not report a transaction involving property used solely as your personal residence, or a transaction between you, your spouse or your dependent child.

NONE ☐

S or DC		Identification of Assets	Type of Transaction (X)				Amount of Transaction (X)					
			Purchase	Sale	Exchange	Date (Mo., Day, Yr.)	$1,001-$5,000	$5,001-$15,000	$15,001-$50,000	$50,001-$100,000	$100,001-$250,000	Over $250,000
	Example:	X Y Z Common	X			2/1/83			X			
1												
2		NOT APPLICABLE										
3												
4												
5												
6												

Part II
Gifts, Reimbursements and Travel Expenses

Incumbents and Termination Filers only:
Report the source, a brief description and the value of: (1) in-kind gifts of transportation, lodging, food or entertainment received from one source totaling $250 or more unless received as personal hospitality at the donor's personal or family residence; (2) other gifts received from one source totaling $100 or more in value; and (3) cash reimbursements of $250 or more received from one source. Exclude gifts and reimbursements received by your spouse that were given totally independent of their relationship to you. **Exclude transportation, lodging, food and reimbursements from the U.S. Government. For (1) and (2), exclude gifts from relatives and exclude gifts of $35 or less when aggregating them for the total from one source.** See instructions for further exclusions.

NONE ☐

S		Source (Name and Address)	Brief Description	Value
	Examples	Nat'l Assn. of Rock Collectors, NY, NY	Airline ticket, hotel room & meals incident to national conference 6/15/83	$500
		Nat'l Assn. of Rock Collectors, NY, NY	Leather briefcase for retiring president	$125
1				
2		NOT APPLICABLE		
3				
4				
5				
6				

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278-100

SF 278 (Rev. [illegible])
FPM Chapter 734
U.S. Office of Personnel Management

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OMB No. [illegible]

Reporting Individual's Name ROBERT ROBERTO, JR.	Page Number	Schedule C

Part I
Liabilities

All Filers: Report liabilities over $10,000 owed to any one creditor at any time during the reporting period by you, your spouse or dependent child. Check the highest amount owed during the reporting period. Exclude a mortgage on your personal residence unless it is rented out, loans secured by automobiles, household furniture or appliances, and liabilities owed to relatives. See instructions for revolving charge accounts.

NONE ☒

S or DC		Creditor (Name and Address)	Type of Liability	Date Incurred	Interest Rate	Term if applicable	Category of Amount or Value (X)				
							$10,001 to $15,000	$15,001 to $50,000	$50,001 to $100,000	$100,001 to $250,000	Over $250,000
	Examples:	First District Bank, Washington, DC	Mortgage on rental property, Rehoboth Beach, Delaware	1981	13%	25 yrs.			X		
		John Jones, 123 J St., Washington, DC	Promissory note	1979	10%	on demand	X				
1											
2											
3											
4											
5											
6											

Part II
Agreements Or Arrangements

All Filers: Report your agreements or arrangements for future employment, leaves of absence, continuation of payment by a former employer (including severance payments), or continuing participation in an employee benefit plan. See instructions regarding the reporting of negotiations for any of these arrangements or benefits.

NONE ☒

	Status and Terms of any Agreement or Arrangement	Parties	Date (Mo., Yr.)
Example:	Pursuant to partnership agreement, will receive capital account & partnership share calculated on service performed through 11/83	Doe Jones & Smith, Home town, USA	7/78 ptnership agmnt.

SF 278 (Rev. [illegible])
FPM Chapter 734
U.S. Office of Personnel Management

Form Approved
OMB No. [illegible]

Page Number		Schedule D

Reporting Individual's Name

ROBERT ROBERTO, JR.

Part I
Positions Held Outside U.S. Government

All Filers: Report any positions held during the applicable reporting period. Positions include but are not limited to those of an officer, director, trustee, general partner, proprietor, representative, employee or consultant of any corporation, firm, partnership, or other business enterprise or any non-profit organization or educational institution. Exclude positions with religious, social, fraternal, or political entities or those solely of an honorary nature.

NONE ☐

	Organization (Name and Address)	Type of Organization	Position Held	From (Mo., Yr.)	To (Mo., Yr.)
Examples:	Nat'l Assn. of Rock Collectors, NY, NY	Non-profit education	President	6/82	6/83
	Doe Jones & Smith, Hometown, USA	Law firm	Partner	7/75	11/83
	STATE OF NEW YORK	GOVERNMENT	JUSTICE OF SUPREME COURT	[illegible]84	present

Part II
Compensation In Excess Of $5000
Paid by One Source

Nominees and New Entrants only: Report sources of such compensation received by you or your business affiliation for services directly provided by you during the reporting period. This includes the names of clients and customers of any corporation, firm, partnership or other business enterprise, or any nonprofit organization, when you directly provided the services generating a fee or payment of more than $5,000. You need not report the U.S. Government as a source.

NONE ☒

	Source (Name and Address)	Brief Description of Duties
Examples:	Doe Jones & Smith, Hometown, USA	Legal services
	Metro University (client of Doe Jones & Smith) Hometown, USA	Legal services in connection with university construction

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ABA
AMERICAN BAR ASSOCIATION
Standing Committee on Federal Judiciary
1800 M Street, NW
Washington, DC 20036
(202) 331-2210

CHAIRMAN
Harold R. Tyler, Jr.
30 Rockefeller Plaza
New York, NY 10112
FIRST CIRCUIT
Ralph I. Lancaster, Jr.
One Monument Square
Portland, ME 04101
SECOND CIRCUIT
William E. Willis
125 Broad Street
New York, NY 10004
THIRD CIRCUIT
Jerome J. Shestack
Suite 3600
1600 Market Street
Philadelphia, PA 19103
FOURTH CIRCUIT
James A. Howard, Sr.
1410 First Virginia Bank Tower
101 St. Paul's Boulevard
Norfolk, VA 23510
FIFTH CIRCUIT
Lloyd Lochridge
Suite 1300
919 Congress Avenue
Austin, TX 78701
SIXTH CIRCUIT
John C. Elam
52 East Gay Street
Columbus, OH 43215
SEVENTH CIRCUIT
Joan M. Hall
Suite 4300
One IBM Plaza
Chicago, IL 60611
EIGHTH CIRCUIT
James W. Hewitt
Post Office Box 80268
1815 Y Street
Lincoln, NE 68501
NINTH CIRCUIT
J. David Andrews
1900 Washington Building
Seattle, WA 98101
Samuel L. Williams
45th Floor
355 South Grand Avenue
Los Angeles, CA 90071
TENTH CIRCUIT
James A. Clark
Suite 1100
383 East 17th Avenue
Denver, CO 80203
ELEVENTH CIRCUIT
M. Roland Nachman, Jr.
Post Office Box 78
2 Dexter Avenue
Montgomery, AL 36101
DISTRICT OF COLUMBIA CIRCUIT
James J. Bierbower
International Square
Suite 1275
1875 I Street, NW
Washington, DC 20006
FEDERAL CIRCUIT
John D. Lane
Suite 600
1666 K Street, NW
Washington, DC 20006
BOARD OF GOVERNORS LIAISON
Sharp Whitmore
2005 Gird Road
Fallbrook, CA 92028
STAFF LIAISON
Irene R. Emsellem
2nd Floor, South Lobby
1800 M Street, NW
Washington, DC 20036
(202) 331-2210
ABA/NET: ABA 461

November 25, 1987

CONFIDENTIAL

The Honorable Joseph R. Biden, Jr.
Chairman, United States Senate
Committee on the Judiciary
Washington, D.C. 20510

Re: ROBERT ROBERTO, JR.
United States District Court
for the Eastern District of New York

Dear Senator Biden:

Thank you for affording this Committee an opportunity to express an opinion pertaining to the nomination of Robert Roberto for appointment as Judge of the United States District Court for the Eastern District of New York.

Our Committee is of the unanimous opinion that Judge Roberto is "Well Qualified" for this appointment.

Sincerely yours,

Harold R. Tyler Jr.

Harold R. Tyler, Jr.
Chairman

cc: All Committee Members

THE ASSOCIATION OF THE BAR
OF THE CITY OF NEW YORK
42 WEST 44TH STREET
NEW YORK 10036

COMMITTEE ON THE JUDICIARY

VICTOR A. KOVNER
CHAIR
30 ROCKEFELLER PLAZA
NEW YORK, 10112-0150
(212) 489-8230

ROBERT D. BALIN
SECRETARY
30 ROCKEFELLER PLAZA
NEW YORK 10112-0150
(212) 489-8230

April 20, 1988

FEDERAL EXPRESS

Senator Alfonse M. D'Amato
520 Senate Hart Office Building
Second Street and Constitution Avenue, N.E.
Washington, D.C. 20510

Dear Senator D'Amato:

I am pleased to inform you that the Committee on the Judiciary of the Association of the Bar of the City of New York has found Justice Robert Roberto, Jr. APPROVED for appointment as a Judge of the United States District Court for the Eastern District of New York.

Very truly yours,

Victor A. Kovner

VAK/mlc

HOWARD E. LEVITT

Birth:	November 23, 1928	Bronx, New York
Legal Residence:	New York	
Marital Status:	Married	Davida Zipser Levitt 3 children
Education:	1946 - 1949	New York University B.A. degree
	1949 - 1952	Harvard Law School LL.B. degree
Bar:	1955	New York
Military Service:	1952 - 1954	United States Army Sergeant
Experience:	1954 - 1956	Sidney N. Zipser, Esq. Associate
	1956 - 1963	Zipser and Levitt Partner
	1962 - 1963	New York State Legislature Joint Legislative Committee on Court Reorganization Assistant Counsel
	1963 - 1967	Law Secretary to Justice Daniel G. Albert Supreme Court, State of New York, Nassau County
	1967 - 1973	Town Attorney Town of Hempstead
	1973 - 1978	Margiotta, Levitt & Ricigliano Partner
	1973 - 1978	Nassau County Board of Supervisors, Counsel
	1978 - present	Justice Supreme Court State of New York 10th Judicial District
Office:	Supreme Court 100 Supreme Court Drive Mineola, New York 11565 516 535-3351	
Home:	55 Park Avenue Malverne, New York 11565	

To be United States District Judge for the Eastern District of New York

I BIOGRAPHICAL INFORMATION (PUBLIC)

1. Full name (include any former names used.)

Howard E. Levitt

2. Address: List current place of residence and office address(es)

Supreme Court, 100 Supreme Court Drive, Mineola, NY 11501. My home address is 55 Park Avenue, Malverne, NY 11565.

3. Date and place of birth.

Bronx, New York. November 23, 1928.

4. Marital Status (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).

I was married on September 4, 1955 to Davida Marian Zipser.

5. Education List each college and law school you have attended, including dates of attendance, degrees received. and dates degrees were granted.

I attended New York University College of Arts and Pure Science from February 19, 1946 to June 1949. I graduated in 1949 with a Bachelor of Arts degree.

I attended Harvard Law School from September 1949 to May 1952. I graduated with an LLB degree.

6. Employment Record: List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including firms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.

From 1954 to 1956 [Associate], Sidney N. Zipser, Esq.
From 1956 to 1963 [Partner], Zipser and Levitt.
From July 1962 to Jan. 1963, Assistant Counsel, Joint Legislative Committee on Court Reorganization, New York State Legislature.
From 1963 to 1967 Law Secretary to Justice Daniel G. Albert, New York State Supreme Court, Nassau County

2)

From 1967 to 1973 Town Attorney, Town of Hempstead

From 1973 to 1978 Counsel to Nassau County Board of Supervisors.

From 1973 to 1978, [Partner] Margiotta, Levitt & Ricigliano, Esqs.

From 1978 to present Justice Supreme Court, State of New York, 10th Judicial District

From 1984 to 1986 Member, Academic Advisory Board, US Naval Academy.

7. Military Service: Have you had any military service? If so, give particulars, including dates, branch of service rank or rate, serial number and type of discharge received.

Army of the United States. Transportation Corps. Fort Eustis, VA. Entered August 26, 1952 as a private. Honorably discharged August 26, 1954 as a sergeant. Serial number US51175899

8. Honors and Awards: List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.

1972 Award for Distinction In Law by School of Business, C.W.Post, Long Island University

1985 Man Of The Year Award, Long Beach Lawyers Association

9. Bar Associations: List all bar associations, legal or judicial-related committees or conferences of which you are or have been a member and give the titles and dates of any offices which you held in such groups.

Nassau County Bar Association (1959-Present)
New York State Bar Association (1958-1978)
American Bar Association (1958-1978)
Nassau-Suffolk Trial Lawyers Association (1966-1968)
National Institute of Municipal Law Officers
(1967-1977) New York State Chairman
Federation of Insurance Counsel (1960-1967)
Jewish Lawyers Association (1963-Present)

10. Other Memberships: List all organizations to which you belong that are active in lobbying before public bodies. Please list all other organizations to which you belong.

3)

American Legion Malverne Post #44
Anti Defamation League of B'Nai Brith-Long Island
Regional Board
Franklin General Hospital
U. S. Naval Academy Parents Club of Long Island

11. Court Admission: List all courts in which you have been admitted to practice, with dates of admission and lapses if any such memberships lapsed. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.

Courts of Record of State of New York, January 1955
U.S. District Court, Eastern District of New York, December 26, 1956
U.S.District Court, Southern District of New York, December 20, 1957
U.S. Court of Appeals, Second Circuit, April 8, 1957
U.S. Supreme Court April 20, 1959

12. Published Writings: List the titles, publishers, and dates of books articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.

There are none

13. Health: What is the present state of your health? List the date of your last physical examination.

My health is excellent. My last physical examination was November 23, 1987.

14. Judicial Office: State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

Elected in 1978 to the Supreme Court, State of New York 10th Judicial District. The Supreme Court is the highest court of original trial jurisdiction in the state. It has unlimited jurisdiction in civil and criminal cases. It is divided into 4 departments and 11 districts. Nassau County is in the 2nd Department and with Suffolk County forms the 10th Judicial District.

4)

15. Citations: If you are or have been a judge, provide: (1) citations for the ten most significant opinions you have written; (2) a short summary of any citations for all appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings; and (3) citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, please provide copies of the opinions.

See attached

16. Public Office: State chronololgically any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.

Assistant Counsel, Joint Legislative Committee on Court Reorganization, New York State Legislature (1962-1963). I was appointed to this office.

Law secretary to Justice Daniel G. Albert, New York State Supreme Court, Nassau County (1963-1967). I was appointed to this office.

Town Attorney, Town of Hempstead (1967-1972). I was appointed to this office.

Counsel, Nassau County Board of Supervisors (1973-1977). I was appointed to this office.

I was never an unsuccessful candidate for elective office.

17. Legal Career:

a. Describe chronologically your law practice and experience after graduation from law school including:

1. whether you served as clerk to a judge, and if so, the name of the judge, the court, and the dates of the period you were a clerk;

I was law secretary (clerk) to Justice Daniel G. Albert, Supreme Court, State of New York (Nassau County) from January 1963 to February 1967.

5)

2. whether you practiced alone, and if so, the addresses and dates;

I did not practice alone.

3. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each.

From 1955 to 1956 [Associate], Sidney N. Zipser, 92 Liberty Street, New York, NY

From 1956 to 1963 [Partner], Zipser and Levitt, 92 Liberty Street, New York, NY and at 100 William Street, New York, NY

From July 1962 to January 1963 Assistant Counsel, Joint Legislative Committee on Court Reorganization, New York State Legislature. Acted as liaison between the Committee and the Courts throughout the State in implementing the newly-enacted Court Reform legislation. Worked directly with Hon. Bertram Wegman, Director of Court Administration for Second Department.

From 1963 to 1967 Law Secretary to Justice Daniel G. Levitt, New York State Supreme Court, Nassau County.

From 1967 to 1973 Town Attorney, Town of Hempstead, Supervised staff of attorneys, law assistants, secretaries, investigators and interns.

From 1973 to 1978 Counsel to Nassau County Board of Supervisors. Co-ordinated on behalf of the members of the Board of Supervisors, with every department of County Government, including areas of budget, labor negotiation and public relations

From 1973 to 1978, private practice [Partner] Margiotta, Levitt & Ricigliano, 955 Front Street, Uniondale, New York.

From 1978 to present, Justice Supreme Court, State of New York, 10th Judicial District.

From 1984 to 1986 Member, Academic Advisory Board, US Naval Academy. Participated in formulating changes in curriculum for the midshipmen at the U.S. Naval Academy.

b. 1. What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?

Insurance, subrogation and negligence defense, 1955-1963

Municipal Law, Zoning and General Practice 1967-1977

6)

2. Describe your typical former clients, and mention the areas, if any, in which you have specialized.

Insurance companies municipalities, builders and developers. I specialized in Insurance Law, Municipal Law and Zoning Practice.

c. 1. Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates.

When I practiced with the firm of Sidney N. Zipser and Zipser & Levitt I appeared in court regularly on a daily basis in the trial of cases in the Municipal Courts of the City of New York, City Courts of the City of New York, and Supreme Court of the State of New York. From 1967 to 1973 as the Town Attorney for the Town of Hempstead, I appeared infrequently in Court. From 1973 to 1978 as Counsel to the Board of Supervisors and in private practice, I appeared infrequently.

2. What percentage of these appearances was in:

(a) federal courts; 5%
(b) state courts of record; 95%
(c) other courts.

3. What percentage of your litigation was:
(a) civil; 100%
(b) criminal... 0%

4. State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

I have not retained any records of cases I have tried to verdict of judgment.

5. What percentage of these trials was:
(a) jury; 30%
(b) non-jury. 70%

18. Litigation: Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the

7)

litigation and the final disposition of the case. Also state as to each case:

(a) the date of representation;
(b) the name of the court and the name of the judge or judges before whom the case was litigated; and
(c) the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

I have not retained records of the cases I litigated while I was in practice, however, the following cases I specifically recall.

1) Woods Patchogue Corp. v Franklin Ins. Co. 5 AD2d 577 (4-21-58); 5 NY2d 479 (4-9-59)

The substance of this case was a determination as to whether the standard fire provisions of sec. 168 of the Insurance Law were incorporated in the fire feature of the "Jewelers' Block Policy" issued by the defendant insurance company to the plaintiff. Judge Kleinfeld succinctly stated that this case which was one of first impression raised the narrow question of whether the insured under the all-risk block policy was entitled to the protection afforded by the standard fire insurance company of New York where the loss occurred through fire. The practical aspect of the case for the plaintiff was that the standard fire policy is voided by a material misrepresentation only if it is wilful, while the block policy contains a proviso voiding it for any material representation whether wilful or not. Judge Kleinfeld stated the question at bar to be: "Does the fire coverage in a block policy constitute 'fire insurance' within the ambit of section 168, or does the statutory definition of such policy as marine insurance (Insurance Law, sec. 46, subd. 20, par[c]) thereby establish a distinct form of insurance whose fire coverage is exempt from the provisions of section 168"?

The Court of Appeals held that the provisions of the Standard Fire Insurance Policy are not incorporated into the Jewelers' Block Policy. This case significantly limited the liability of insurance companies, under block policies in the event of loss by fire.

My firm represented the plaintiff Woods Patchogue Corp. I wrote the briefs in the appeal to the Appellate Division and the Court of Appeals.

8) Counsel for the Franklin Insurance Co. was the firm of Rein, Mound & Cotton.

2) Nobile v Travelers Ins. Co., 3 AD2d 993 (8) [June 1957]; 4 NY2d 536 [June 25, 1958]

This case involved the cancellation of an insurance policy by the broker for the insured. The appeal by the defendant company was from a judgment of the Supreme Court, New York County in favor of the plaintiff upon a decision of that court at Special Term. The clerk in the office of the broker wrote in ink across the face of the policy at the top, "cancel 10/14/55". The policy was mailed with a letter stating, "I am herewith enclosing the above mentioned auto policy for cancellation". The letter and policy were received in the defendant's office on Monday, Dec. 17 at 9am. Just after midnight that same morning, the plaintiff's tractor trailor was in a collision. The trial court held that cancellation had not taken effect prior to the accident for two reasons. First, the notice in which the policy was returned did not state when thereafter the cancellation shall be effective. Second, until the actual receipt of the notice and policy by the defendant there can be no cancellation. The Appellate Division affirmed and the Court of Appeals reversed distinguishing the facts in this case from those in Crown Point Co. v Aetna Ins. Co., 127 NY 608, where the method of terminating the insurance was not specified except where the insured party was to request it. The Court of Appeals pointed out that condition 24 of the policy itself in this case provided that "this policy may be cancelled by the named insured by mailing to the company written notice stating when thereafter the cancellation shall be effective". The court held that cancellation takes place when the insured mails to the company written notice requesting cancellation and stating the date in which the insured wishes the policy cancelled.

I prepared the briefs for the appeal in the Appellate Division and Court of Appeals.

My firm was counsel for the plaintiff Angelo Nobile. The attorney for the defendant was John G. Donovan.

3) Franklin v Kraus, 83 Misc2d 42; 49 AD2d 740; 37 NY2d 813.

This case involved the question of submitting to voter approval a reapportion plan providing for a county legislature consisting of 15 legislative districts or retaining a weighted voting system. The Court of Appeals affirmed the Appellate Division which had approved the alternative plans of government being so placed before the electorate.

9)

I worked on the memoranda and briefs with George C. Pratt, now a Judge of the U.S. District Court, Eastern District of New York.

4) American Airlines v Town of Hempstead, 298F2nd 369.

This case involved the application of American Airlines v The Port of New York Authority, et al to enjoin the enforcement of the Town's unnecessary noise ordinance at JFK airport.

I prepared the briefs and argued the appeal on behalf of the Town of Hempstead. The District Court had granted a preliminary injunction and its order was affirmed.

19. Legal Activities: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation in this question. Please omit any information protected by the attorney-client privilege (unless the privilege has been waived.)

The most significant legal activities I pursued are the cases I have described in the answer to question #18. In addition, my activities as Town Attorney for the Town of Hempstead and Counsel to the Board of Supervisors of the County of Nassau in the drafting of resolutions, ordinances and local laws were significant in resolving the complex problems of municipalities in our society today.

CITATION LIST

1. PRATT V NEW YORK STATE PUBLIC HIGH SCHOOL ATHLETIC ASS'N
   507 N.Y.S.2d 793, 133 Misc2d 679

2. INCORPORATED VILLAGE OF HEMPSTEAD V CARLSON
   493 N.Y.S.2d 280, 129 Misc2d 537

3. WESTCHESTER SQUARE HOSPITAL V ALLSTATE INSURANCE CO.
   492 N.Y.S.2d 658, 128 Misc2d 1039

4. ALLEN V HASKINS
   467 N.Y.S.2d 153, 120 Misc2d 1073

5. ZUCKERBERG V BLUE CROSS & BLUE SHIELD OF GREATER NEW YORK
   464 N.Y.S.2d 678, 119 Misc2d 834, rev'd 108 AD2d 56

6. NAGIN V LONG ISLAND SAVINGS BANK
   450 N.Y.S.2d 725,114 Misc2d 61, aff'd 99 AD2d 827,
   472 N.Y.S.2d 423

7. ROSENBERG V GOLDMAN
   454 N.Y.S.2d 222, 115 Misc.2d 471

8. O'ROURKE V NASSAU COUNTY CIVIL SERVICE COMMISSION
   519 N.Y.S.2d 307

9. WIGNES V BOTTGER
   518 N.Y.S. 2d 936, 136 Mis2d 490

10. HUTCHESON V GRACE LUTHERAN SCHOOL
    517 N.Y.S.2d 760, 40 Ed. Law Rep. 934

II FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, from memberships, former employers, clients, or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.

I have no deferred income arrangements, stock options or uncompleted contracts. As a sitting judge for the past 10 years I do not expect to derive any receipts from business relationships, professional services, memberships or former clients or customers.

2. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.

Having been a sitting judge for the past 10 years I do not believe that there are any categories of litigation or financial arrangements that are possible potential conflicts of interest. However, should there be any potential conflict of interest I will immediately inform the parties to the litigation through their attorneys of such potential conflict so that they can make an informed decision whether to ask me to recuse myself. In the event that they do not request that I recuse myself, and I nevertheless believe that such potential conflict of interest might affect my decision, I would recuse myself.

3. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court?

I do not have any plans, commitments or agreements to pursue outside employment with or without compensation during my service with the court.

4. List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees dividends, interest, gifts, rents, royalties, patent, honoraria, and other items exceeding $500 or more (If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.)

5. Please complete the attached financial net worth statement in detail (Add schedules as called for).

See attached

6. Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

I was a Republican committeeman and executive committeeman from 1965 through 1977. My responsibilities were to present all candidates for elective office to the voters in my area which included the Village of Malverne and a portion of the Incorporated area of Lakeview. In addition I had the responsibility of overseeing the activities of the Republican clubs in my executive area and supporting the activities of the town and county republican committees.

II FINANCIAL DATA AND CONFLICT OF INTEREST (Question 5)

ASSETS

IRA	HOWARD	DAVIDA	WENDY
EQUITABLE LIFE	$29,516.00		
FEDERATED GROWTH TRUST	2,691.78		
MANUFACTURERS HANOVER	2,616.94		
MANUFACTURERS HANOVER	2,245.52		
FIDELITY BANK NY		11,552.95	
	$37,070.24	$11,552.95	
BANK ACCOUNTS			
BANK OF NY (checking)	38.00		
FIDELITY BANK NY (checking)	3,332.54.......Joint		
FIDELITY BANK NY (Money Market)		17,450.51	5,129.64
FIDELITY BANK NY (checking)		411.32	7,222.48 (CD)
FIDELITY BANK NY		11,773.85	7,037.36 (CD)
ANCHOR SAVINGS (Money Market)		19,538.71	
ANCHOR SAVINGS (checking)		21.54	
	$3,332.54	$49,195.93	$19,389.48
STOCKS			
TRANSAMERICA CORP		3,672.50	
REPUBLIC NY		21,285.00	
AMERICAN GENERAL	236.00......Joint		
CHASE		4,655.00	
CONTINENTAL CORP		19,829.00	
OHIO CASUALTY		5,700.00	
ALL CITY		536.25	
IMO DELAVAL		327.25	
	$236.00	$56.995.00	
LIMITED PARTNERSHIP			
DELPHI FILM ASSOC. IV	$5,000.00		
REAL ESTATE			
RESIDENCE		$275,000.00	
CARS			
NISSAN 1987		$ 15,000.00	

TOTAL ASSETS

	HOWARD	DAVIDA	WENDY
IRA	$37,070.24	$11,552.95	-0-
BANK	3,370.54	49,195.53	$19,389.48
STOCK	236.00	56,005.00	-0-
REAL ESTATE (RESIDENCE)		$275,000.00	
CAR		15,000.00	
TOTAL ASSETS	$40,676.78	$406,753.48	$19,389.48

LIABILITIES	HOWARD	DAVIDA	WENDY
CAR LOAN (Amalgamated)	$11,176.55		
CREDIT CARDS			
MUR-LEE'S	1,108.08	Joint	
CITIBANK MASTER CARD	1,366.71	Joint	
CITIABANK VISA	1,115.67	Joint	
MANUFACTURERS - HANOVER MASTER CARD	1,197.39	Joint	
TOTAL LIABILITIES	$15,964.40		

- -

TOTAL ASSETS....................$466,819.74
TOTAL LIABILITIES................ 15,964.40
NET WORTH.................$450.855.34

GENERAL INFORMATION

No assets are pledged

We are not defendants in any suits or legal action.

We have never taken bankruptcy.

[illegible]
[illegible] 734
Office of Personnel Management

Financial Disclosure Report

Form Approved
OMB No. [illegible]

Page 1

eporting Status *(Check Appropriate Box)*		Agency Use Only	OGE Use Only	Date of Appointment, Candidacy, Election or Nomination *(Mo., Day, Yr.)*	Termination Date *(If Applicable)* *(Month, Day, Year)*
Incumbent	☒ New Entrant, Nominee, or Candidate ☐ Termination Filer			12-22-87	

eporting Individual's Name	Last Name Levitt	First Name and Middle Initial Howard E.
Position for Which Filing	Title of Position United States District Court Judge	Department or Agency *(If Applicable)* Eastern District of New York
.ocation of Present Office	Address *(Number, Street, City, State and ZIP Code)* Supreme Court Drive, Mineola, N.Y. 11501	Telephone No. *(Include Area Code)* 516 535 3351
sition(s) Held With the Federal vernment During the Preceding 12 onths *(If Not Same as Above)*	Title of Position(s) and Date(s) Held	
Presidential Nominees Subject to Senate Confirmation	Name of Congressional Committee Considering Nomination Judiciary	Do You Intend to Create a Qualified Diversified Trust? ☐ Yes ☒ No
Certification ERTIFY that the statements I have ade on this form and all attached hedules are true, complete and rrect to the best of my knowledge d belief.	Signature of Reporting Individual	Date *(Month, Day, Year)* 12-23-87
Other Review (If desired by agency)	Signature of Other Reviewer	Date *(Month, Day, Year)*
gency Ethics Official's Opinion e information contained in this port discloses no conflict of interest der applicable laws and regulations.	Signature of Designated Agency Ethics Official/Reviewing Official	Date *(Month, Day, Year)*
Office of Government Ethics Use Only	Signature	Date *(Month, Day, Year)*

Reporting Periods

Incumbents: Complete Schedules A, B, C, and Part I of D. The reporting period is the preceding calendar year except for Part II of Schedule C and Part I of Schedule D where you must also include any positions held or agreements or arrangements made from the beginning of the filing year until the date you file.

Termination Filers: Complete Schedules A, B, C, and Part I of D. The reporting period begins at the end of the period covered by your previous filing and ends at the date of termination.

Nominees, New Entrants and Candidates for President and Vice President: Complete Schedules A, C, and D. (Candidates do not file Part II of Schedule D.)

- **Schedule A**—The reporting period for income (BLOCK C) and Transactions Test (BLOCK D) is the preceding calendar year and the current calendar year up to the date of filing. Value assets in BLOCK B as of any date you choose that is within 31 days of the date of filing.
- **Schedule C, Part I** (Liabilities)—The reporting period is the preceding calendar year and the current calendar year up to any date you choose that is within 31 days of the date of filing.
- **Schedule C, Part II** (Agreements and Arrangements)—Show any agreements or arrangements as of the date of filing.
- **Schedule D**—The reporting period is the preceding two calendar years and the current calendar year up to the date of filing.

omments of Reviewing Officials *(If additional space is required, use the reverse side of this sheet)*

(Check box if comments are continued on the reverse side) ☐

EVIOUS EDITION USABLE

278-100

NSN 7540-01-070-8444

Chapter 734
Office of Personnel Management

Form Approved
OMB No. [illegible]

Reporting Individual's Name				
Howard E. Levitt	**Assets and Income**	Page Number	2	Schedule A

Filers: In BLOCK A report (a) the ntity of each asset held for the produc- n of income at the close of the reporting iod which had a fair market value ex- ding $1000 and (b) any other asset source of income which generated over 0 in income during the reporting period. s includes but is not limited to em- vers, stocks, bonds, tax shelters, bank ounts, real property, mutual funds, sions, IRA assets, assets of certain ts, commodities futures, personal busi- ses and partnership interests. Exclude r personal residence unless you rent it . See instructions for rules on bank ounts and complex holdings.

All Filers: In BLOCK B report the value of each asset listed in BLOCK A which had a fair market value exceeding $1000 at the close of the reporting period.

All Filers: In BLOCK C report the type and amount of income exceeding $100 or more received from the assets and other sources of income listed in BLOCK A. You must report the actual amount of any income not of a type specifically noted below. You need not report the actual amount of your spouse's earned income, only the source in BLOCK A. You may not check "qualified trust" unless you have a blind trust which has been specifically approved by the Office of Government Ethics. If you, your spouse or dependent child are the beneficiary of a trust which no one of you created and has no knowledge of the assets, refer to the instructions to see if it qualifies as an "excepted trust." If "none" (or less than $101) is checked under Category of Amount of Income, no other entries need be made in BLOCK C for that item.

Incumbents and Termination Filers only: In BLOCK D, for any real property, stocks, bonds, commodities futures and other securities listed in BLOCK A, did you purchase, sell, or exchange the item during the reporting period for a value that exceeds $1000?

BLOCK A Assets & Income Sources	BLOCK B Valuation of Assets							BLOCK C Income																	BLOCK D Transactions Test	
Identify each asset and income source of yours, your spouse(S) and your dependent child (DC). NONE ☐	Category of Value (X)							Type of Income (X)						Other (Specify Type)	Category of Amount of Income (X)								Actual Amount Only if "Other" Specified	Date (Mo., Day, Yr.) Only if Honoraria	If yes, complete Schd. B Part I for those assets including those sold for a loss.	
	None (or less than $1001)	$1,001-$5,000	$5,001-$15,000	$15,001-$50,000	$50,001-$100,000	$100,001-$250,000	Over $250,000	Dividends	Rent	Interest	Capital Gains	Excepted Trust	Qualified Trust		None (or less than $101)	$101-$1,000	$1,001-$2,500	$2,501-$5,000	$5,001-$15,000	$15,001-$50,000	$50,001-$100,000	Over $100,000			YES	NO
Examples: X Y Z Common				x				x									x								x	
Examples: Doe Jones & Smith, Hometown, USA			x											ptnrshp income									$50,000			
State of New York														Salary 1986-1987									166,369			
Tempo Travel "Travel Consultant"														Business Income												
Transa Common		X						X								X										
Rep NY Common				X				X									X									
A Gn Cp Common	X							X							X											
Chase Common		X						X								X										
Cntl Cp Common				X				X										X								
Ohio Ca Common			X					X								X										
All City Common	X							X							X											
Imo Div Common	X							X							X											

U.S. Office of Personnel Management

Reporting Individual's Name: Howard E. Levitt

Assets and Income

Page Number: 3

Schedule [illegible]

All Filers: In BLOCK A report (a) the identity of each asset held for the production of income at the close of the reporting period which had a fair market value exceeding $1000 and (b) any other asset or source of income which generated over $100 in income during the reporting period. This includes but is not limited to employers, stocks, bonds, tax shelters, bank accounts, real property, mutual funds, pensions, IRA assets, assets of certain trusts, commodities futures, personal businesses and partnership interests. Exclude your personal residence unless you rent it out. See instructions for rules on bank accounts and complex holdings.

All Filers: In BLOCK B report the value of each asset listed in BLOCK A which had a fair market value exceeding $1000 at the close of the reporting period.

All Filers: In BLOCK C report the type and amount of income exceeding $100 or more received from the assets and other sources of income listed in BLOCK A. You must report the actual amount of any income not of a type specifically noted below. You need not report the actual amount of your spouse's earned income, only the source in BLOCK A. You may not check "qualified trust" unless you have a blind trust which has been specifically approved by the Office of Government Ethics. If you, your spouse or dependent child are the beneficiary of a trust which no one of you created and has no knowledge of the assets, refer to the instructions to see if it qualifies as an "excepted trust." If "none" (or less than $101) is checked under Category of Amount of Income, no other entries need be made in BLOCK C for that item.

[illegible] Incumbents and Termination Filers only: In BLOCK D for any real property, stocks, bonds, commodities futures and other securities listed in BLOCK A, [illegible] did you [illegible] purchase, sell, or exchange the item during the reporting period for a value that exceeds $1000?

BLOCK A Assets & Income Sources			BLOCK B Valuation of Assets							BLOCK C Income																	BLOCK D Transactions Test	
Identify each asset and income source of yours, your spouse(S) and your dependent child (DC). NONE ☐			Category of Value (X)							Type of Income (X)							Category of Amount of Income (X)										If yes, complete Sched. B Part I for those assets including those sold for a loss.	
S or DC			None (or less than $1001)	$1,001-$5,000	$5,001-$15,000	$15,001-$50,000	$50,001-$100,000	$100,001-$250,000	Over $250,000	Dividends	Rent	Interest	Capital Gains	Excepted Trust	Qualified Trust	Other (Specify Type)	None (or less than $101)	$101-$1,000	$1,001-$2,500	$2,501-$5,000	$5,001-$15,000	$15,001-$50,000	$50,001-$100,000	Over $100,000	Actual Amount Only if "Other" Specified	Date (Mo., Day, Yr.) Only if Honoraria	YES	NO
	Example:	X Y Z Common				x				x									x								x	
		Doe Jones & Smith, Hometown, USA			x											ptnrshp income									$50,000			
1 S		Fidelity Bank N.Y. Money Market				X						X							X									
2 DC		Fidelity Bank N.Y. Money Market			X							X							X									
3 DC		Fidelity Bank N.Y. Certificates of Deposit				X						X							X									
4 S		Anchor Savings Money Market				X						X							X									
5		Equitable Life IRA				X						X									X							
6		Federated Growth Trust IRA		X									X				X											
7		Manufacturers Hanover IRA			X													X										
8 S		Fidelity Bank N.Y. IRA			X							X							X									
9		Delphi Film Assoc. III Ltd Partnership			X											Ltd Partn Income									$600			
10																												

F 278 (Rev. [illegible])
[illegible] Chapter 734
S. Office of Personnel Management

Form Approved
OMB No. [illegible]

Reporting Individual's Name Howard E. Levitt	Page Number	4	Schedule C

Part I
Liabilities

All Filers: Report liabilities over $10,000 owed to any one creditor at any time during the reporting period by you, your spouse or dependent child. Check the highest amount owed during the reporting period. Exclude a mortgage on your personal residence unless it is rented out, loans secured by automobiles, household furniture or appliances, and liabilities owed to relatives. See instructions for revolving charge accounts.

NONE ☒

	Creditor (Name and Address)	Type of Liability	Date Incurred	Interest Rate	Term if applicable	Category of Amount or Value (X)				
						$10,001 to $15,000	$15,001 to $50,000	$50,001 to $100,000	$100,001 to $250,000	Over $250,000
Examples:	First District Bank, Washington, DC	Mortgage on rental property, Rehoboth Beach, Delaware	1981	13%	25 yrs.			X		
	John Jones, 123 J St., Washington, DC	Promissory note	1978	10%	on demand	X				
1										
2										
3										
4										
5										
6										

Part II
Agreements Or Arrangements

All Filers: Report your agreements or arrangements for future employment, leaves of absence, continuation of payment by a former employer (including severance payments), or continuing participation in an employee benefit plan. See instructions regarding the reporting of negotiations for any of these arrangements or benefits.

NONE ☐

Status and Terms of any Agreement or Arrangement		Parties	Date (Mo., Yr.)
Example:	Pursuant to partnership agreement, will receive capital account & partnership share calculated on service performed through 11/83	Doe Jones & Smith, Hometown, USA	7/75 ptnership agmnt.

EVIOUS EDITION USABLE

278-108

SF 278 (Rev. [illegible])
FPM Chapter [illegible]
U.S. Office of Personnel Management

Form Approved
OMB No. [illegible]

Reporting Individual's Name	Howard E. Levitt

Page Number	5	Schedule D	

Part I
Positions Held Outside U.S. Government

All Filers: Report any positions held during the applicable reporting period. Positions include but are not limited to those of an officer, director, trustee, general partner, proprietor, representative, employee or consultant of any corporation, firm, partnership, or other business enterprise or any non-profit organization or educational institution. Exclude positions with religious, social, fraternal, or political entities or those solely of an honorary nature.

NONE ☐

	Organization (Name and Address)	Type of Organization	Position Held	From (Mo., Yr.)	To (Mo., Yr.)
Examples:	Nat'l Assn. of Rock Collectors, NY, NY	Non-profit education	President	6/82	6/83
	Doe Jones & Smith, Hometown, USA	Law firm	Partner	7/78	11/83
	Franklin General Hospital, Valley Stream, L.I., N.Y.	Community Hospital	Trustee	5/74	Present
	U.S. Navel Academy, Annapolis, Maryland	Education	Member, Academic Advisory Board	7/84	7/86

Part II
Compensation In Excess Of $5000
Paid by One Source

Nominees and New Entrants only: Report sources of such compensation received by you or your business affiliation for services directly provided by you during the reporting period. This includes the names of clients and customers of any corporation, firm, partnership or other business enterprise, or any nonprofit organization, when you directly provided the services generating a fee or payment of more than $5,000. You need not report the U.S. Government as a source.

NONE ☐

	Source (Name and Address)	Brief Description of Duties
Examples:	Doe Jones & Smith, Hometown, USA	Legal services
	Metro University (client of Doe Jones & Smith) Hometown, USA	Legal services in connection with university construction

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278-109

III GENERAL (PUBLIC)

1. An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in service the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

For the greatest part of my legal career (all but my first 7 years of law practice) I have worked for governmental agencies i.e. New York State Joint Legislative Committee on Court Reorganization; Supreme Court State of New York; Town of Hempstead and County of Nassau. In my capacity as Town Attorney for the Town of Hempstead and Counsel for the Board of Supervisors, I devoted considerable time to working on matters that served the disadvantaged such as the implementation of programs for the mentally retarded and handicapped, senior citizens and the unemployed. Many of these programs were funded in part by the Federal Government and in part by the Town of Hempstead and the County of Nassau.

2. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion. Do you currently belong, or have you belonged to any organization which discriminates through either formal membership requirements or the practical implementation of membership policies? If so list with dates of membership what have you done to try to change these policies.

To my knowledge none of the organizations of which I have been and am presently a member has discriminated or does discriminate on the basis of race, sex or religion.

3. Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, did it recommend your nomination? Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and interviews in which you participated).

I received an inquiry from the United States Senator Alfonse D'Amato as to whether I would be interested in an appointment to the U.S. District Court for the Eastern District of New York. Subsequent to my affirmative reply, I was interviewed by his Judicial Screening Committee. I was also

2)

intervewed by the Office of Legal Policy of the Department of Justice and by the Federal Bureau of Investigation and the American Bar Association.

4. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as seeking any express or implied assurances concerning your position on such case, issue or question.

I was not questioned as to my views as to any specific case, legal issue or question in a manner that could reasonably be interpreted as seeking any express or implied assurances concerning my position on such case, issue or question.

5. Please discuss your views on the following criticism involving "judicial activism."

The role of the Federal judiciary within the Federal Government, and within society generally, has become the subject of increasing controversy in recent years. It has become the target of both popular and academic criticism that alleges that the judicial branch has usurped many of the prerogatives of other branches and levels of government.

Some of the characteristics of this "judicial activism" have been said to include

a. A tendency by the judiciary toward problem-solution rather than grievance-resolution;

b. A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;

c. A tendency by the judiciary to impose broad, affirmative duties upon governments and society;

d. A tendency by the judiciary toward loosening jurisdictional requirmements such as standing and ripeness; and

e. A tendency by the judiciary to impose itslf upon other institutions in the manner of an administrator with continuing oversight responsibilities.

While I believe that the courts have the right and duty when a case is properly before them to review the actions of the

3)

other branches of government in the light of constitutional provisions, I do not believe that there should be a relaxation of the traditional limits on justiciability. The danger of judicial activisim (characterized in a-e of the question) as opposed to judicial restraint is that it can become partisan, parochial, arbitrary and reckless.

AMERICAN BAR ASSOCIATION **Standing Committee on Federal Judiciary**
1800 M Street, NW
Washington, DC 20036
(202) 331-2210

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ABA/NET: ABA 461

December 23, 1987

CONFIDENTIAL

The Honorable Joseph R. Biden, Jr.
Chairman, United States Senate
Committee on the Judiciary
Washington, D.C. 20510

Re: HOWARD E. LEVITT
United States District Court
for the Eastern District of New York

Dear Senator Biden:

Thank you for affording this Committee an opportunity to express an opinion pertaining to the nomination of Howard E. Levitt for appointment as Judge of the United States District Court for the Eastern District of New York.

Our Committee is of the unanimous opinion that Judge Levitt is "Well Qualified" for this appointment.

Sincerely yours,

Harold R. Tyler

Harold R. Tyler, Jr.
Chairman

cc: All Committee Members

THE ASSOCIATION OF THE BAR
OF THE CITY OF NEW YORK
42 WEST 44TH STREET
NEW YORK 10036

COMMITTEE ON THE JUDICIARY

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CHAIR
30 ROCKEFELLER PLAZA
NEW YORK, 10112-0150
(212) 489-8230

ROBERT D. BALIN
SECRETARY
30 ROCKEFELLER PLAZA
NEW YORK 10112-0150
(212) 489-8230

April 20, 1988

FEDERAL EXPRESS

Senator Alfonse M. D'Amato
520 Senate Hart Office Building
Second Street and Constitution Avenue, N.E.
Washington, D.C. 20150

Dear Senator D'Amato:

I am pleased to inform you that the Committee on the Judiciary of the Association of the Bar of the City of New York has found Justice Howard Levitt APPROVED for appointment as a Judge of the United States District Court for the Eastern District of New York.

Very truly yours,

Victor A. Kovner

VAK/mlc

CONFIRMATION HEARING ON: WILLIAM H. ERICKSON, SIMEON T. LAKE III, RICHARD A. SCHELL, AND WILLIAM G. CAMBRIDGE

MONDAY, MAY 16, 1988

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The committee met, pursuant to notice, at 2:05 p.m., in room SD-226, Dirksen Senate Office Building, Hon. Paul Simon (acting chairman) presiding.

Also present: Senator Thurmond.

Staff present: Steven J. Metalitz, chief nominations counsel; Andrew Rainer, investigative counsel; Robert Short, minority chief investigator; Frank Klonoski, minority investigator.

Senator SIMON. The hearing will come to order.

Before we begin any questioning of the nominees, some of our colleagues are here and I am pleased to call on them, on the basis of seniority: Senator Exon, we will call on you. I know you have been pushing hard for Judge Cambridge and we are very pleased to have you, Senator Karnes, and Representative Smith here.

STATEMENT OF HON. J. JAMES EXON, A U.S. SENATOR FROM THE STATE OF NEBRASKA

Senator EXON. Mr. Chairman, thank you very much. We first want to thank you for accommodating the pleas that we have made for our nominee today whom I am about to introduce, and then I know that we will also want to hear from my colleague, Senator Karnes, and then from Congresswoman Virginia Smith.

I will be brief, Mr. Chairman, because I think you know of my strong backing and support for this nominee by the President, and I think you also know that I have done everything that I could to hammer on the Judiciary Committee to allow this nomination to come up for consideration. It is particularly important to Nebraska that this moves speedily ahead.

So, Mr. Chairman and members of the Judiciary Committee, it gives me great pleasure to appear before you to introduce a very distinguished jurist, Judge William Cambridge, of Hastings, Nebraska. I give full support and endorsement to Judge Cambridge's nomination.

In 1955 when William Cambridge was there practicing as an attorney, he enjoyed a stellar legal career, during which he practiced law with distinction in Hastings, Nebraska. In 1981, the leadership and talents of William Cambridge were put to the service of the

State of Nebraska when he was appointed to the State District Court for the Tenth Judicial District.

When Judge Cambridge's name was put before the voters, as is the constitutional practice in Nebraska, Judge Cambridge was retained with an overwhelming mandate. I know several attorneys who have had the opportunity to practice before Judge Cambridge. The reports I have received are universal that Judge Cambridge is fair, even-tempered, and a very careful jurist. I am confident that Judge Cambridge would serve the Nation well as a Federal judge.

The Federal District Court in the State of Nebraska has had one of the Nation's heaviest workloads. Even before there was a vacancy on the district court, Nebraska's docket was very full. Nebraska's Federal judges are to be congratulated for their hard work and efficient management of a most difficult docket. Judge Cambridge's assistance and excellent management skills will certainly be welcome.

As the committee knows, early in this Congress I introduced legislation to create an additional judgeship for the State of Nebraska. The report of the Judicial Conference has since confirmed this need.

I am confident that once the committee examines the statistics, it will be evident that the swift approval of Judge Cambridge is the first and most important thing. I also recommend that the committee give serious consideration at the earliest possible time to my legislation, which is cosponsored by our dear friend and late colleague, Senator Edward Zorinsky.

The State of Nebraska has been patiently waiting for the President to make this particular nomination. However, I want to assure the committee that any delay was entirely the result of factors which had absolutely nothing to do whatsoever with Judge Cambridge.

I thank the committee for taking this nomination up in an expeditious manner. I will be pleased to assist the committee in any way to assure the confirmation of Mr. William Cambridge.

Thank you very much, Mr. Chairman.

Senator SIMON. We thank you, Senator Exon.

Senator Karnes, it is good to have you with us, and we will congratulate you at this point on winning that primary.

STATEMENT OF HON. DAVID KARNES, A U.S. SENATOR FROM THE STATE OF NEBRASKA

Senator KARNES. Thank you, Mr. Chairman.

Mr. Chairman and distinguished members of the Judiciary Committee, I take great pleasure in appearing in support of Judge William Cambridge, President Reagan's nominee for the vacancy of the U.S. Federal District Court in Omaha, NE.

I am particularly pleased to be able to introduce Judge Cambridge at these hearings today because of the heavy caseload that I understand the U.S. district court in Omaha currently has before it.

In fact, just this morning I received a confirmation from the docket clerk that there are 600 cases awaiting this particular judge's docket when he arrives. So I know that the hard-working manner with which Judge Cambridge approaches his job will be tested immediately.

Judge Cambridge is an excellent choice to fill the vacant position on this court, and I would like to thank this committee for its swift consideration of this nominee. Judge Cambridge has the qualities that I believe are among the most important for a judge; namely, integrity, judicial temperament, an outstanding judicial record and academic record, as well as an acknowledged firm understanding of the law and its application to the facts before him.

Through his years of experience as one of two judges on the bench of the Tenth Judicial District Court of Nebraska, and before that during his many years in the general practice of law in Hastings, NE, Judge Cambridge has demonstrated his devotion to and knowledge of the law and his commitment to fairness and equity.

He is known by his colleagues, as well as members of the bar in Nebraska as being fair and an impartial judge who is willing to work long and hard hours to bring trials to a speedy conclusion.

While this committee has already spent considerable time reviewing Judge Cambridge's record—and I will not go into great detail of why I believe he is such a fine representative for the Federal bench—I would ask the committee to take particular note of his service to his community, to his profession, and particularly in the area of education, where I know all of us share a great concern. His record of performance on the local school board and the Hastings College Board of Trustees is well recognized and well known.

Finally, bearing the other qualifications in mind that my colleague, Senator Exon, and I have stated, along with the rest of Judge Cambridge's record, I believe that this nominee is the right choice for the current vacancy on the court and I urge this committee to report this nomination to the Senate floor with a favorable recommendation as quickly as possible.

Thank you, Mr. Chairman.

Senator SIMON. Thank you, Senator Karnes.

I am pleased to have my former House colleague, Representative Virginia Smith, here. Representative Smith.

STATEMENT OF HON. VIRGINIA SMITH, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEBRASKA

Ms. SMITH. Thank you, Senator, Senator Thurmond.

It is an honor for me to be here and share in introducing our outstanding candidate for Federal judge. I want to say it is a pleasure for me personally, and also for my constituents and for the lawyers and the judges in the Third District of Nebraska.

Besides his outstanding qualifications for this appointment, Judge Cambridge's candidacy gives us special satisfaction for another reason. Except for a lamentably briefly 1-year term before Judge Richard Dyer passed on, it has been more than 30 years since we have had a judge from the Third District of Nebraska. This will be restoring some overdue balance to the heavily eastern representation of the Federal bench in our State.

We have an outstandingly qualified candidate here who will represent the three-fourths of western Nebraska that is home for half a million people and that has about half of all the lawyers in Nebraska, and just as good lawyers as any who live in Omaha or Lincoln. So we are just delighted that we have such an outstanding candidate.

Let me say I know all of you realize that geography is important, and the juries, the defendants, the plaintiffs, the lawyers, and everybody involved in the administration of justice in central and western Nebraska will be highly pleased that now we have a fine judge—we will have with your favorable consideration—from our part of the State.

We have unique land and water and agricultural and social and economic and environmental problems, so we are very, very happy about this. And let me say we had almost an embarrassment of riches in candidates; we had many highly qualified people from the Third District of Nebraska and we had a hard time winnowing out the very best and the most outstanding candidate for this position.

Let me say that Judge Cambridge and I are friends. We both started our lives in Iowa and then we went to the great State of Nebraska. You know, Judge Cambridge has a judicial temperament. He is an outstanding judge, but he has also found the time to be a leader in the efforts of the Chamber of Commerce, the Presbyterian Church, the Salvation Army, the United Way, and particularly in high school and college education. Moreover, he is noted for his judicial leadership, for his statewide respect in his judicial temperament, and for his scholarly approach to the law.

It is my hope that you will decide in your wisdom to confirm our judge as quickly as possible because we do have a great backlog and we need the judge and we do have a remarkably fine nominee.

Thank you.

Senator SIMON. We thank you.

Senator EXON. Mr. Chairman, if I could just add a note, I want to welcome my great friend and colleague, Senator Thurmond from South Carolina. He and I spend a great deal of time together in the Armed Services Committee. He does an outstanding job over here on the Judiciary Committee, and I do not know what we would do without him on the Armed Services Committee where he has been a pillar for so very long.

I just want to add one last thought. I was Governor of Nebraska longer than any other individual who served in that position and I have always been grateful for the consideration that the people of Nebraska have given me.

Because of my long tenure there, I appointed more judges under the Missouri Plan that we have in place there than any former governor ever had, and I took no job more seriously than the appointment of judges because they are there dispensing justice for the most part long, long after those of us who make the appointments have gone on to something different.

Of all of the judicial nominees that I have taken part in, there is none that I feel better about or more assured than this nominee today and the great job that I think he will do in serving the people of Nebraska as a whole and the United States in the future.

Senator SIMON. Judge Cambridge, we welcome you here. Do you have any members of your family you wish to introduce?

Judge CAMBRIDGE. I do. I would like to introduce my wife, Jean; my daughter, Elisa Poulson from Kansas City, MO; and my daughter, Karen Portwood, from Hastings, NE. Their husbands have graciously allowed me to borrow them this weekend. Elisa's husband's name is James Poulson and Karen's husband is Richard Portwood, and I am deeply grateful to them for allowing them to come out here.

I would like to take this opportunity also to thank my Congressional delegation here, Senator Karnes, Senator Exon, and Congresswoman Virginia Smith, for the very kind and gracious things they have just said about me.

Senator SIMON. Well, it is a high recommendation for you that they are here in your behalf.

Senator Thurmond, do you wish to add anything?

Senator THURMOND. Thank you very much.

Judge Cambridge, I want to congratulate you upon being appointed by the President to be U.S. District Judge for the District of Nebraska, and I also congratulate you for having your able Representative here, Virginia Smith, and both Senators, one a Democrat and one a Republican. You have got everybody for you, so I do not think you will have any trouble.

I have had the pleasure of serving with Senator Exon on the Armed Services Committee. He is Chairman of the Strategic Subcommittee there that handles SDI and all the strategic weapons. It has been a pleasure for me to work with him. He does an outstanding job there. I am glad to see you before this committee, Senator.

Senator Karnes is a new man here. He has made an indelible impression here on this Senate and we look forward to his reelection and having him back here with us next year.

It is a pleasure to have all of you here.

Judge CAMBRIDGE. Thank you, sir.

Senator SIMON. We thank all of you and you are welcome to stay, but we understand what schedules are like.

Senator EXON. Thank you.

Senator SIMON. Next, I would like to call on Senator Bill Armstrong and Senator Timothy Wirth, and Justice Erickson can join them here.

Senator Armstrong, you are the senior member of this crew in terms of service here. We will call on you first.

STATEMENT OF HON. WILLIAM L. ARMSTRONG, A U.S. SENATOR FROM THE STATE OF COLORADO

Senator ARMSTRONG. Mr. Chairman, I am grateful to you for doing so, and I thank you for having this hearing this afternoon.

I have prepared, and would ask consent to insert in the record of this proceeding, a statement in support of the nomination of Justice Erickson. And then if that is agreeable to put the written statement in the record, I would just like to take a moment to reflect upon the fact that of the many people who the President might have selected from the State of Colorado to serve on the Federal bench, it is hard for me to imagine a person as well qualified or as popularly acclaimed as the nominee, Justice William H. Erickson.

The fact of the matter is that his selection by the President has been received by the legal community and by those who are knowledgeable with great enthusiasm, and for good reason.

Justice Erickson has had a distinguished legal career. He is a native of our State. After a brief stint in business, he was a private practitioner as a trial lawyer for about 20 years. He has been a member of the State Supreme Court since 1971, and for 2 years was the Chief Justice of our State Supreme Court.

In addition, Mr. Chairman, to serving with distinction in his professional capacity, he has been a leader in many professional organizations and has contributed enormously to the thought life of the Nation, and particularly of the legal community.

He is a past chairman of the American Bar Association's Standing Committee on Standards for Criminal Justice. The judicial standards written by this committee have been cited in more than 10,000 decisions.

In addition, Justice Erickson has been a member of the Board of Governors of the American Bar Association, Chairman of the President's National Commission for Review of Federal and State Laws Relating to Wiretapping and Electronic Surveillance, a fellow of the American College of Trial Lawyers, and a director of the National Judicial College.

Mr. Chairman, the truth of the matter is he is admirably qualified, supremely qualified for this appointment, and without putting too fine a point on it, we really need him on the bench.

I think the committee is aware that a combination of circumstances has more or less thinned our ranks on the Federal bench out in Colorado, and so we are delighted to have an outstanding nominee to introduce to the committee. We hope that in due course, sooner rather than later, we hope, the committee will approve him and he will be sent to the floor of the Senate for approval as well.

[The prepared statement of Senator Armstrong follows:]

WILLIAM L. ARMSTRONG
COLORADO

United States Senate
WASHINGTON, DC 20510

Statement by Senator William L.Armstrong

On the Nomination of William H. Erickson
To the United States District Court of Colorado

May 16, 1988

I strongly endorse the nomination of Justice William H. Erickson, President Reagan's nominee to serve on the United States District Court for the District of Colorado. I congratulate the Senate Judiciary Committee for promptly scheduling a hearing on this nomination. I urge the committee to act on this nomination without delay.

Justice Erickson has had a distinguished legal career. He is a native Coloradan, and graduated in the upper third of his high school, college and law school. He worked briefly as a petroleum drilling engineer then worked in the private practice of law as a trial lawyer for 20 years. He has served on the Colorado Supreme Court since 1971. Between 1983 and 1985 he served as the court's chief justice. He is the past chairman of the American Bar Association's Standing Committee on Standards for Criminal Justice. The judicial standards written by this committee have been cited in more than 10,000 appellate decisions.

In addition, Justice Erickson has been a member of the Board of Governors of the American Bar Association, Chairman of the President's National Commission for the Review of Federal and State Laws Relating to Wiretapping and Electronic Surveillance, a fellow of the American College of Trial Lawyers and a Director of the National Judicial College. He has served on two dozen other boards or commissions related to the practice of law.

I urge the committee to promptly act on this nomination. As you well know, this is not the only vacancy in this district. A second vacancy has existed in the district since July 10, 1984 Taken together, these vacancies have existed 82 months. One federal judge, Judge John L. Kane, has said more than 1,500 cases could have been heard if these vacancies had been filled promptly. Judge Kane added, "Since there are always at least two sides to a case, at the very least, 3,060 people and businesses have been deprived of their day in court..."

I cannot help but note that just a few days ago Judge Kane accepted medical retirement, creating even greater urgency that these judicial vacancies be filled. I urge the Senate Judiciary Committee to promptly act on the nomination of Justice Erickson to fill a three year-old vacancy on the federal district court in Colorado.

Senator **Simon**. Senator Wirth.

STATEMENT OF THE HON. TIMOTHY E. WIRTH, A U.S. SENATOR FROM THE STATE OF COLORADO

Senator **Wirth**. Thank you very much, Mr. Chairman. I am also pleased to be here to welcome Justice William Erickson to Washington, D.C. and to this hearing. I greatly appreciate the speed with which this committee is taking up his nomination.

As Senator Armstrong has pointed out and as everybody in Colorado is painfully aware, we have had a number of vacancies on the Federal bench for a long time. This vacancy, in particular, has existed for quite a while.

The administration had not sent a nomination up until March of this year, and the fact that we are having this hearing today and that you all have processed Judge Erickson to this point as rapidly as you have is testimony to the determination of the committee, I know, to fill out the bench and we gratefully appreciate your support in helping us to do that.

Judge Erickson comes to the committee and to this potential responsibility with an enormous amount of very, very impressive experience. I have a judicial review committee in the State of Colorado. Membership is Republican and Democrat, conservatives and liberals all across the spectrum. They have reviewed on my behalf, as a non-lawyer, all of the nominees that come up for the bench.

They found Justice Erickson to be qualified. In addition, the ABA's panel has found Justice Erickson to be well qualified, and part of that opinion found him to be, quote, "exceptionally well qualified."

Senator Armstrong outlined his long and very distinguished career. He is also a prolific legal scholar and an author who has published more than 70 articles in professional journals and textbooks. He has been a member of several law school faculties, and certainly brings to this set of responsibilities a very, very well-honed judicial career and record with more than 800 decisions behind him.

We are pleased that the committee is moving so rapidly to review Justice Erickson's credentials. We look forward to working with the committee as you work through this process and we thank you very much, Mr. Chairman, you and your colleagues, for your expeditious handling of this issue.

Senator **Simon**. We thank both of you. Let me also note that a friend of many of us, Dick Schmidt, is here also as one of your supporters, Mr. Justice.

Do you have members of your family that you wish to introduce here, Mr. Justice?

Justice **Erickson**. Thank you very much, Mr. Chairman. I first want to thank Senator Armstrong and Senator Wirth for their very kind remarks, but it is with pleasure that I introduce my wife, Dorie Erickson, who is here in the second row.

Seated to her immediate right is Major General and Mrs. Kenneth Hodson. Major General Hodson was the former Judge Advocate of the Army and was the Executive Director of the National Wiretapping Commission when I chaired that Commission.

To his immediate right is Tim Timkovich, who is now with the Washington office of Davis, Graham, and Stubbs, and was a former law clerk of mine that served with great distinction; and then this gentleman whom you have referred to as Richard Schmidt, who dedicated our judicial building in Colorado, I had the pleasure of working with him on the Standards of Criminal Justice Relating to A Fair Trial and A Free Press for 15 years, and for 20 years with General Hodson.

Thank you very much for giving me the opportunity to introduce these friends.

Senator SIMON. We thank you, and we are pleased to see both of your Senators here recommending you.

Senator Thurmond.

Senator THURMOND. Thank you very much.

Judge, I want to congratulate you upon your selection and appointment by the President. You have got both of your Senators here. One is a Democrat, one is a Republican; they are both for you. That speaks well for you, too, and we are very glad to see you here. You appear to be well qualified.

Senator Wirth and I serve on the Armed Services Committee together and I have the pleasure of working with him there. I have known your other Senator here for a long time. I do not know of any Senator in the Senate I have more respect for than Senator Armstrong. I will be very pleased to support you.

Now, I notice there is another judge that has been appointed by the President from Colorado. Justice Erickson's nomination came in in March, but there is another one that came in in February, Donald Abram.

I just wonder if there is any objection by either one of you Senators to him, or could we get him up, too.

Senator ARMSTRONG. Mr. Chairman, I have written to every member of the committee urging that there be a hearing at an early date on Judge Abram, and Senator Leahy, who I believe is approving the scheduling in the absence of the Chairman, indicates to me that he will take that under consideration.

I believe you have a session scheduled in a few days on the 24th or so, and so——

Senator THURMOND. His nomination came in ahead of Judge Erickson's and I just wondered if——

Mr. ARMSTRONG. We are lobbying, at least, for an early date, whether it can be the 24th, but as soon as possible in view of the need to just move on it.

Senator THURMOND. So you have been promised a hearing by him?

Senator ARMSTRONG. No, I have not been promised a date, but he has promised that he will try to get it scheduled and is looking at it actively.

Senator THURMOND. Do you approve his nomination?

Senator ARMSTRONG. I do.

Senator THURMOND. Senator Wirth, do you approve his nomination?

Senator WIRTH. Senator Thurmond, Senator Armstrong and I have talked about this. I pointed out in my introduction of Judge Erickson that I have a committee which meets and reviews the credentials of all the individuals who are up for nomination to the Federal bench.

The committee, which is chaired by a former dean of the law school and, as I pointed out, has a very distinguished and deep membership of both political parties, did not find Mr. Abram to be qualified for the Federal bench.

I have forwarded that information and that commentary to the committee and I am sure that the committee will be reviewing Mr. Abram's qualifications in a very thorough and careful fashion, as they always do.

Senator THURMOND. I am just anxious to see these nominations go forward unless there is some reason why they should not, and I just wondered why we are having this hearing on Justice Erickson ahead of Mr. Abram.

But we are very glad to approve you, Judge, and are glad both Senators are here in your behalf.

Thank you very much, Mr. Chairman.

Senator SIMON. I thank you, Justice Erickson and my colleagues.

We have Senator Gramm here and Congressman Ralph Hall, and let me insert in the record here a statement of Senator Lloyd Bentsen in behalf of the nominations of both Sim Lake and Richard Schell.

[The statement of Senator Bentsen follows:]

STATEMENT OF SENATOR LLOYD BENTSEN
JUDICIARY COMMITTEE HEARING ON THE NOMINATIONS OF SIM LAKE AND RICHARD SCHELL

MAY 16, 1988

As the Judiciary Committee convenes this hearing, I want to express my strong support for the nominations of Richard Schell and Sim Lake. Both of these Texans possess solid qualifications, sound character and judicial temperament, which I am sure will be evident in today's hearing. Their nominations enjoy broad support within their respective communities, and the need for each of them on the bench in Beaumont and Houston is great. I appreciate the cooperation of the Judiciary Committee in expediting consideration of these nominations, and I urge the Committee to speedily approve these nominations and clear the way for confirmation by the full Senate.

For the past six years, Richard Schell has served admirably as a state judge in Collin County. He has won the respect and support of the Plano and Collin County Bar Associations, and will bring valuable judicial experience to the federal bench in the Eastern District. And I know Judge Schell's arrival is eagerly awaited by the other members of the Eastern District -- the number of pending cases per judge in the Eastern District of Texas is almost twice the national average. Richard Schell will be a fine and much-needed addition to the federal bench, and he has my wholehearted support.

Sim Lake will be filling an equally needy, if not more needy, slot in the Southern District and, like Richard, brings valuable experience and solid legal background to the federal judiciary. He excelled in his academic legal training at the University of Texas, no small feat at my alma mater. From there, Sim went on to become a partner in the prestigious Houston law firm of Fulbright & Jaworski. During his years there, he has gained vital litigation experience and developed a reputation as an excellent trial lawyer. I am sure that he will serve the citizens of the Houston area well, and I know that he looks forward to the challenge of serving on the bench in the Southern District.

Again, I want to express my appreciation to the members of this Committee for their prompt consideration of these important nominations. I hope that this Committee will quickly approve these nominations, and that the full Senate will follow speedily with its confirmation. We can then look forward to years of dedicated public service from Richard Schell and Sim Lake.

Senator SIMON. Since both nominees are from Texas, we will get you all up there at the same time.

Senator Gramm.

STATEMENT OF HON. PHIL GRAMM, A U.S. SENATOR FROM THE STATE OF TEXAS

Senator GRAMM. Well, Mr. Chairman, let me first thank you for holding this hearing so rapidly. We have a huge caseload in Texas. We wish the caseload existed somewhere else, but it does not, and I wanted to say that I personally appreciate the speed with which this committee has acted on these two nominees.

Let me begin with Sim Lake. Simeon Lake is an outstanding attorney in Houston. He graduated from Texas A&M University with honors and, as one would expect, leaving there, going to the University of Texas, he graduated first in his class in law school.

He then left, went into the Army, came back and joined the law firm of Fulbright and Jaworski. He became a partner there in 1977. He is certified in civil trial law by the Texas Board of Legal Specialization.

He has had an outstanding and varied career and was rated well qualified by the ABA.

I have no doubt, Mr. Chairman, that Sim Lake will be an outstanding Federal judge. Quite frankly, I am very encouraged that a person who has the successful career that Sim Lake has is willing to serve on the Federal bench. I think it tells us something about the fact that there are still very highly qualified people who are willing to serve the Nation and to serve in the public interest.

The other person nominated by the President that I am pleased to introduce today is Richard Schell.

Richard has had a long and rich career in the practice of the law. He is currently judge of the 219th Judicial Court in Texas. He was appointed to that position on February 7 of 1986 and was subsequently reelected to a 4-year term.

Prior to that, he served as judge of the county court at law from 1982 to 1986. He was in private practice for 5 years before that. He served for 1 year as assistant district attorney. He was an instructor at the SMU Law School. He attended SMU and graduated with honors in economics and then attended law school at SMU.

Richard Schell has an outstanding record on the State bench and I am confident, Mr. Chairman, that he will be an outstanding Federal judge.

Senator SIMON. Congressman Hall, we are pleased to have—I can say "our" former House colleague, because Senator Gramm and I both served with you in the House here.

STATEMENT OF HON. RALPH HALL, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS

Mr. HALL. Thank you, Mr. Chairman and Senator Thurmond, members of the committee. I, too, am honored to be here as one who feels privileged to speak in behalf of a young man named Richard Schell.

I have known Richard all of his life and I cannot help but go back in time a little bit when I think of his wonderful family. You have heard his accomplishments. Senator Gramm and Senator Bentsen both will certainly verify the landmarks that this young man has already left.

But it is hard for me to believe the accomplishments because in 1960 when Judge Schell was only 10 years old, House Speaker Sam Rayburn died. Ray Roberts who was in the State Senate, ran for Mr. Rayburn's House seat and I ran for Ray Roberts' place in the State Senate, and the first man I went to see was Richard Schell's grandfather.

As I flew from Dallas this morning, I enjoyed every mile I flew, and as I walked over from the House here to this meeting to testify in behalf of Richard Schell, I enjoyed every step I took, thinking back on what a wonderful family his has been—a family that saw a city grow from 3,000 to over 200,000—a family that was a part of everything worthwhile that took place in that city. That is the type of man we are getting.

A fellow churchman of mine, he is a graduate and former instructor at SMU. As a practicing lawyer, he became coordinator of the court, took the court over, and later returned as judge of that court. He is just a young man that at an early age has mastered everything he has touched, and done it with dignity and class.

I commend Richard Schell as I have from the very start. Senator Gramm, you have appointed not just a young man, but a great family to this judgeship, and I am honored to be here as one who is proud and will be proud to have my sons, who were in school at SMU with Judge Schell, practice in his court. I am proud to continue to know him as a friend in our church and a friend in our community and certainly a leader in the judiciary in the years that lie ahead.

Senator SIMON. We thank you.

Judge Lake, do you have some members of your family here?

Mr. LAKE. Thank you, Mr. Chairman. I am not quite a judge yet. I am the only one of the four who is not, but I hope that is not a foreboding of things to come.

Senator SIMON. All right.

Mr. LAKE. I would like to thank very much Senator Gramm and Senator Bentsen, who was here a moment ago and left a statement.

Senator SIMON. Yes. He is tied up in the Finance Committee.

Mr. LAKE. I would like to introduce my wife, Carol; my sons, Justin—smile, Justin—and Timothy; and our friend, Judy DeMoss. Judy is a parishioner and member of the vestry in our church in Houston. I thank them for being here.

Senator SIMON. We thank you.

Judge Schell, do you have members of your family here?

Judge SCHELL. Yes, I do, Senator, thank you very much. I also want to thank Senator Gramm for his kind words on my behalf, Senator Bentsen for being here, and Congressman Hall for his words. I appreciate that very much.

Let me introduce my family to you. I have my wife here, Janice, and my two sons, Christopher and Benjamin. I also have my parents here, Alex and Shirley Schell. Thanks very much for the opportunity to introduce them.

Senator SIMON. We thank you.

Senator Thurmond.

Senator **Thurmond**. Thank you, Mr. Chairman.

Well, we have two here now, Simeon Timothy Lake III, and Richard A. Schell. You are both young, you appear intelligent, and you come highly recommended. I do not see any reason why you should not be approved.

Somebody says you are maybe too young and you should not be a judge until you are at least 40, but I was elected a judge at 35 and I did not think I was too young. I did all right, I thought.

Senator **Simon**. You were a pretty good judge?

Senator **Thurmond**. Well, I hope so.

At any rate, I like to see young people who are interested in going on the bench. So many of them do not care to go on so young. I want to congratulate you on your appointment by the President and your approval here by both your Senators. One is a Democrat and one is a Republican.

I have had the pleasure of serving with one of these Senators on the Armed Services Committee and he is one of the ablest men in the Senate, Senator Gramm, and your other Senator has a fine reputation.

We are glad to have Congressman Hall here, too, who stands with such prestige in the House. It is nice of you to come over here and take the time to be here, Congressman.

I hope you will be confirmed, and I am sure with this fine gentleman back here now, we are going to get these nominations out in a hurry.

Thank you.

Senator **Simon**. We thank you very, very much, and if I can ask the two of you to remain, we would be happy to have Congressman Hall and Senator Gramm speak. If the other two nominees would come forward, also, we can take your oath.

Raise your right hands. Do you swear that the testimony you are about to give will be the truth, the whole truth and nothing but the truth, so help you God?

Judge **Erickson**. I do.

Mr. **Lake**. I do.

Judge **Schell**. I do.

Judge **Cambridge**. I do.

Senator **Simon**. Thank you. Justice Erickson, we will call on you first here.

You have an impressive background not only in service, but in scholarship, and I want to commend you for that.

You mentioned chairing the Wiretapping Commission. Can you just give me a 2-minute summary of what kind of conclusions you reached on that Commission?

TESTIMONY OF HON. WILLIAM H. ERICKSON, ENGLEWOOD, CO, TO BE U.S. DISTRICT JUDGE FOR THE DISTRICT OF COLORADO

Justice **Erickson**. I will be glad to try to, Senator. It was a five-volume report that we submitted to the President at the direction of the Congress. The Omnibus Crime Control and Safe Streets Act of 1968 called for a review of Title III, which is the wiretapping section of that bill, at the end of 10 years.

We took testimony. We had law enforcement experts that discussed the developments in the art. We explored the impact of organized crime. We made recommendations which we hoped would cause the Congress to have a more workable tool at their hands.

I think the Congress has included many of our suggestions and we are rather proud of the work that was done. We would like to think that wiretapping is a very useful tool for law enforcement, but we found that the expense of wiretapping is extremely high and we had to point that fact out, as well as the fact that there are difficulties; that the statute, which was extremely well done, did have some areas where there should be amendments.

That is about as quick a summary as I can give you.

Senator SIMON. I guess what I am trying to determine is whether there is a sensitivity to basic civil liberties.

Justice ERICKSON. Oh, there definitely was and, of course, that was given thought by the Congress when the bill was put in. We found some abuses and we brought those to the attention of the Congress.

For example, we found in one instance one police department had a perfect record on all their wiretaps and that their affidavits always complied completely with what they discovered. But we found out their affidavits were prepared after the tap had been run and, of course, we made it very clear that that wasn't what the Act was contemplated to do and tried to provide some safeguards.

Senator SIMON. Mr. Justice, I regret to say we are about to have a roll call right now. I assume you are willing to stay.

Justice ERICKSON. I plan to be here when you come back.

Senator SIMON. We will have a 10-minute recess at this point and we will be right back.

[Recess.]

Senator SIMON. The hearing will be resumed.

Justice Erickson, one of the provisions in the Code of Judicial Conduct says, "It is inappropriate for a judge to hold membership in any organization that practices invidious discrimination on the basis of race, sex, religion, or national origin. Membership of a judge in an organization that practices invidious discrimination may give rise to perceptions," and so forth.

The question has arisen—and I understand you have been sensitive to this yourself, and I commend you for it—regarding the Cherry Hills Country Club. What is your observation at this point about the club and its situation?

Justice ERICKSON. I was in the House of Delegates in 1984 when Canon 2(a) had the commentary added to the canon that you have just read from. At the time, I returned from that ABA meeting when that really tracked what the Judicial Conference of the United States had done in 1980 and tried to implement means to ensure that there would be no discrimination in clubs.

I checked the bylaws of the Cherry Hills Country Club and the bylaws are totally neutral. There are women members. There are no restrictions on any of the bases—race, sex, religion, or national origin.

I was advised by the Justice Department that B'nai Brith and the Anti-Defamation League have advised the Justice Department that they have no objections to Cherry Hills.

The immediate past president of the Cherry Hills Country Club is Hispanic. There are no blacks, and if you will recall in reading the commentary, it makes it quite clear that you can't tell whether there is invidious discrimination from the membership list alone.

The commentary goes on to say that it is the obligation of every judge to search his conscience and if there is invidious discrimination, he should not be a member of that club.

If there is invidious discrimination, I have no desire to continue my membership in the Cherry Hills Country Club. The only way I can tell there are no blacks is I did bring the membership directory and it is rather obvious that there are no blacks.

I made inquiry of the current president and the immediate past president, who was Hispanic, and he says there has never been a black applicant. The cost of membership in the Cherry Hills Country Club is at this time $30,000. At the time that I joined the club, it was far less than that, but if there is not discrimination, you hate to walk away from that type of a down payment requirement, if you will.

I did check and I have made various inquiries, but much of this is factual. I saw your letter and it is very difficult with the guidelines that you have to make an accurate determination of whether any club does practice invidious discrimination.

A person can be turned down by any club because he doesn't part his hair the right way, and that is more invidious than any basis that we have talked about. But I have not been able to determine whether there is invidious discrimination to the point that I could testify under oath that there is or there isn't.

The best suggestion that I could make to try to indicate my sincerity is to say that we have a number of judges on the U.S. district court; that I would be glad to submit the issue to them and try to make as many facts available as possible and have them make a determination of whether there is discrimination—invidious discrimination, as it is described in the commentary—and if there is, I would resign, or submit it to the Judicial Conference of the United States. They have a committee on codes of conduct and I would still abide by the conclusion of that committee.

But I think for me to read bylaws that are neutral and to have no way of ascertaining what happens at the time they select members—and I have never been in any ways involved in that, although I will say that I have recommended certain people that haven't been afforded membership. That is the best suggestion I've got.

I have noticed from previous hearings before this committee that if you do resign, you are admitting that there is invidious discrimination. And when Senator Wirth called me on April 14 and made inquiry, I told him that I would do my best to ascertain whether there was discrimination, and I've done what I can, but I have been unable to uncover any evidence of invidious discrimination.

As far as Jewish members are concerned, it is very difficult to say. It is a religion. Names appear to be Jewish, but they may or may not be Jewish. One of my very close friends has often been referred to as Jewish, and yet he is a Christian Scientist. And so the name doesn't spell it out, and it is offensive to me to think of calling one of these people that is purportedly Jewish and say, are you Jewish. I think it would be rather inappropriate, myself.

Senator SIMON. But, in general, as a member of the country club, you probably know whether somebody is Jewish or not, generally, do you not?

Justice ERICKSON. As active as I am in Cherry Hills, I don't. I played the golf course once in the 24 years I've been there.

Senator SIMON. I think you ought to get your money back from the Cherry Hills Country Club. [Laughter.]

Justice ERICKSON. My wife uses the club, and the reason that I joined the club was that we bought property that adjoins the club and it was a good method for my sons and daughters to learn how to swim and do some of those things that are essential to the development of young people.

Senator SIMON. I guess my feeling is if there is any doubt, then that doubt ought to be resolved in the direction of resignation, and I think it could be done in such a way that you make clear why it is being done.

Justice ERICKSON. If there is invidious discrimination, and I find that out by any source or develop evidence that there is, I will resign. I have no desire to belong to a club that does have invidious discrimination in its membership practices.

Senator SIMON. Your overall record and the bar association's evaluation of you have been excellent. A couple of attorneys have questioned your judicial temperament. How would you respond to that?

Justice ERICKSON. I have learned a lot in 17 years on the Supreme Court of Colorado. When I first went on the bench, as a former trial lawyer it was awfully difficult for me not to be like the Irishman that said is this a private fight or can anyone get in, and it was hard for me not to ask questions and try to determine what my—or let them know what my position was.

After having served the period of time that I have, I seldom ask a question because I've found that the lawyers are there prepared to present their case in the best way that they can as advocates, and that I learn a lot more by listening than by talking.

So I think I've learned, and some of my colleagues are beginning to learn that they don't add that much to the light of the case by extended questioning.

Senator SIMON. Then, finally, you are going on to a court that has a real backlog, and I notice—and this is to your credit—you have written a lot, you have been active in leadership, but as you look at the backlog on that court——

Justice ERICKSON. It is terrifying.

Senator SIMON. Those outside activities and other things are going to have to be curtailed as you move on that backlog.

Justice ERICKSON. I'm aware of that.

Senator SIMON. And you are prepared to do that?

Justice ERICKSON. I was on the American Bar Association Action Commission to Reduce Court Costs and Delay for 4 years. We came up with some recommendations that we thought we were rather proud of. The implementation of those standards, which really did make strong inroads into delay problems in our courts, would be a good place for me to try to see if I learned anything in the work that we did.

Senator **Simon**. Senator Thurmond.

Senator **Thurmond**. Thank you, Mr. Chairman.

I have a letter written to Justice Erickson by Charles F. Brega, B-r-e-g-a. Who is he?

Justice **Erickson**. He is the immediate past president of the Cherry Hills Country Club and is Hispanic in origin.

Senator **Thurmond**. Hispanic in origin.

He says,

> Your call to me this week asking whether the Cherry Hills Country Club has a policy or rule limiting membership to any particular color, creed, or class prompts me to write you this letter, which can be used by you as you deem appropriate.
>
> I have been a member of the Cherry Hills Country Club since approximately 1964 and am the immediate past president. The club does not have any rule, bylaw, or policy, written or unwritten, limiting membership to any particular class as a result of race, religion, or color. As you know, we do have a women's membership class in which we currently have nearly 100 members. Aside from that distinction, there are no distinctions in Cherry Hills other than membership categories based upon age.
>
> If I can be of further assistance, please let me know. Charles F. Brega.

I just wanted to put that in the record.

[Letter follows:]

ROATH&BREGA

ATTORNEYS AT LAW

Republic Plaza
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Denver, Colorado 80202
303-893-5800
Telecopier
303-893-5891

Charles F. Brega
Director

April 20, 1988

The Honorable William H. Erickson
10 Martin Lane
Englewood, CO 80110

Dear Justice Erickson:

Your call to me this week asking whether Cherry Hills Country Club has a policy or rule limiting membership to any particular color, creed or class prompts me to write you this letter, which can be used by you as you deem appropriate.

I have been a member of Cherry Hills Country Club since approximately 1964 and am the immediate past President. The club does not have any rule, bylaw or policy, written or unwritten, limiting membership to any particular class as a result of race, religion or color. As you know, we do have a Women's Membership class in which we currently have nearly 100 members. Aside from that distinction, there are no distinctions in Cherry Hills other than membership categories based upon age.

If I can be of further assistance to you in this matter, please let me know.

Sincerely,

Chuck Brega

Charles F. Brega, Esq.

CFB/lr

Senator **Thurmond**. Judge, we frequently hear the argument that courts act in response to various social problems because the legislature has failed to act on its own. How would you respond to this defense of an activist judiciary?

Justice **Erickson**. Senator, I'm very much opposed to an activist judiciary. I don't think the courts ought to run the National Space Administration. I don't think they should give legal advice.

It is my opinion, and I've tried to teach that at the New York Appellate Judges School, that appellate judges should write opinions that decide the issue that is before them and go no further. The narrower the opinion, the better the opinion.

After I had been on the bench about 4 years, someone asked me what I would do if I could go back and try to improve my opinions and I said I'd like to strike about 10 words from 10 opinions because I think what I said was broader than I had intended it to be.

So I'm very much in favor of deciding a case on the narrowest possible basis.

Senator **Thurmond**. I do not think I have any other questions, Mr. Chairman. Thank you very much.

Senator **Simon**. Okay. In that connection, just one final question. You wrote an article for the "American Criminal Law Review" in which you say, "*Miranda* has done little to protect the accused or to limit police interrogation."

Obviously, as a district judge, you will be living with decisions of the U.S. Supreme Court.

Justice **Erickson**. That's right. Well, I have a copy of the article, and I had two copies of it made which I'd be very happy for the committee to have. If I could take one second, I could tell you what I tried to point out in the article.

[The article follows:]

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AMERICAN CRIMINAL LAW REVIEW

MIRANDA SYMPOSIUM

MIRANDA v. ARIZONA: A HISTORICAL PERSPECTIVE....*Stephen J. Markman*

MIRANDA v. ARIZONA AND THE LEGAL MIND: FORMALISM'S TRIUMPH OVER SUBSTANCE AND REASON............................*Joseph D. Grano*

THE UNFULFILLED PROMISE OF *MIRANDA v. ARIZONA*................................*Hon. William H. Erickson*

A STATUTORY REPLACEMENT FOR THE *MIRANDA* DOCTRINE ..*Philip Johnson*

ARTICLE

CHILD ABUSE: ARREST AND PROSECUTION DECISION-MAKING ....*Douglas J. Besharov*

NOTE

PRESS-ENTERPRISE, INC. v. SUPERIOR COURT OF CALIFORNIA FOR THE COUNTY OF RIVERSIDE

1789

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THE UNFULFILLED PROMISE OF MIRANDA v. ARIZONA

by Hon. William H. Erickson*

I. Introduction

In *Miranda v. Arizona*,[1] the Supreme Court broadened the interpretation of the language of the fifth amendment[2] and past precedent,[3] and, for the first time, "installed the Fifth Amendment to the Constitution . . . in the stationhouses of America."[4] The Court held that a criminal suspect who is in custody must be informed of certain constitutional rights before he is interrogated by the police.[5] The promise of *Miranda* was to provide "concrete constitutional guidelines for law enforcement agencies and courts to follow"[6] in safeguarding an accused's privilege against compulsory self-incrimination. Twenty years later, the promise of a "bright-line" *Miranda* rule remains unfulfilled. Rather than providing a bright-line test, *Miranda* has generated fifth and sixth amendment issues in nearly every criminal case. Subtle distinctions have developed which neither clarify the

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[*] Justice, Supreme Court of Colorado (1971-), Chief Justice (1983-1985); Chairman, American Bar Association Standing Committee on Standards of Criminal Justice (1983-1986); Chairman, Fellows of the American Bar Foundation (1985-1986); Judicial Member at Large on the Board of Governors of the American Bar Association (1975-1979); Chairman, Criminal Justice Section of the American Bar Association (1972); Member of Commission on Accrediation of Law Enforcement Agencies (1980-1983); Member of the Council of the American Law Institute.

The author gratefully acknowledges the assistance of Dwight K. Shellman and Madison E. Bond in the preparation of this article.

[1] 384 U.S. 436 (1966).

[2]

> The Fifth Amendment provides that no person "shall be compelled in any criminal case to be a witness against himself." A literal reading of that language certainly suggests that the privilege against self-incrimination has no application to unsworn statements obtained by stationhouse interrogation, and for a good many years this was the common assumption.

W. LaFave & J. Israel, Criminal Procedure 283 (1985).

[3] Before *Miranda*, confessions elicited by the police in state prosecutions were admissible if they were "voluntary" under the "totality of the circumstances." If the confession was involuntary, its admission into evidence was held to violate the due process clause of the fourteenth amendment. *See, e.g.*, Brown v. Mississippi, 297 U.S. 278 (1936). For a concise history of the pre-*Miranda* law of confessions, see Caplan, *Questioning Miranda*, 38 Vand. L. Rev. 1417, 1427-43 (1985).

[4] L. Baker, Miranda: Crime, Law & Politics 170-71 (1983).

[5] A suspect who is taken into custody and interrogated

> must be warned prior to any questioning that he has the right to remain silent, that anything he says can be used against him in a court of law, that he has the right to the presence of an attorney, and that is he cannot afford an attorney one will be appointed for him prior to questioning if he so desires.

Miranda v. Arizona, 384 U.S. at 479.

[6] *Id.* at 442.

privilege against self-incrimination nor advance society's interest in the resolution and fair determination of criminal cases.

Reinterrogation is one of the issues the *Miranda* court left unanswered. *Miranda* did not address what restrictions, if any, exist on subsequent interrogation by police officers once the suspect invokes his right to remain silent or his right to counsel. In *Michigan v. Mosley*,[7] the Court held that, under certain circumstances, the police are not prohibited from initiating a second interrogation after the accused exercises his right to remain silent.[8] The Court noted that an accused's invocation of his right to remain silent did not create "a blanket prohibition against the taking of voluntary statements or a permanent immunity from further interrogation. . . ."[9]

In *Edwards v. Arizona*,[10] however, the Court held that once a suspect invokes his right to counsel during custodial interrogation, the suspect is not subject to further interrogation unless counsel is provided or the accused initiates further communications.[11] The *per se* prohibition of *Edwards* prevents police officers from initiating a second interrogation once the accused exercises his right to consult with counsel, but, under *Mosley*, no such prohibition exists if the accused asserts his right to remain silent. Yet both of these "*Miranda* rights, " the right to consult with counsel and the right to remain silent during custodial interrogation, were implemented to achieve the same end — the protection of the fifth amendment privilege against self-incrimination.

An analysis of the *Edwards* rule, to which part II of this article is devoted, discloses a strained, if not inconsistent, constitutional foundation. Nothing in the *Miranda* opinion compels such a rule; indeed, *Edwards* imposes a "constitutional straight jacket"[12] on police officers, which the *Miranda* court sought to avoid. There should be no distinction between the right to counsel and the right to remain silent, both of which are derived from and designed to safeguard the fifth amendment's privilege against self-incrimination. As I view the *Edwards* rule, it injects yet another element of gamesmanship into the police interrogation room. Rather than addressing the substantive question of whether a suspect voluntarily, knowingly and intelligently relinquished his right to counsel, the admissibility of probative evidence turns on the minimally relevant inquiry as to who initiated the second interrogation.

In addition to the inconsistent treatment of an accused's *Miranda* rights under the fifth amendment, the *Miranda* right to counsel and the sixth amendment right to counsel have also been blurred. This latter point is taken up in Part III. The confusion results from the tentative constitutional foundation of *Miranda*, and its persistence today is evidenced by two cases from the 1985-86 Supreme Court term.

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[7] 423 U.S. 96 (1975).

[8] *Id.* at 102 (establishing relevant inquiry as whether respondent's right to cut off questioning was scrupulously honored).

[9] *Id.*

[10] 451 U.S. 477 (1981).

[11] *Id.* at 484.

[12] Miranda v. Arizona, 384 U.S. at 467.

II. MIRANDA AND THE FIFTH AMENDMENT

A. Michigan v. Mosley *and* Edwards v. Arizona*: A Comparison*

The *Miranda* court did not address the issue of when police may initiate subsequent interrogations after the accused has exercised his right to remain silent or his right to counsel. Chief Justice Warren did comment on the subsequent procedure to be followed after the accused indicated an intent to exercise his fifth amendment rights:

> Once warnings have been given, the subsequent procedure is clear. If the individual indicates in any manner, at any time prior to or during questioning, that he wishes to remain silent, the interrogation must cease. At this point he has shown that he intends to exercise his Fifth Amendment privilege; any statement taken after the person invokes his privilege cannot be other than the product of compulsion, subtle or otherwise. Without the right to cut-off questioning, the setting of in-custody interrogation operates on the individual to overcome free choice in producing a statement after the privilege has been once invoked. If the individual states that he wants an attorney, the interrogation must cease until an attorney is present. At that time, the individual must have an opportunity to confer with the attorney and to have him present during any subsequent questioning.[13]

The *Miranda* Court's view of the consequences of the suspect's invocation of either the right to remain silent or the right to counsel was clear—interrogation was to cease.

Michigan v. Mosley[14] reflects a retreat from the "subsequent procedure" passage in *Miranda*. Richard Mosley was arrested in connection with two recent robberies. Mosley was advised of his *Miranda* rights, waived them, and was interrogated. He then stated that he did not want to talk about the robberies, and the interrogation ceased. Two hours later, a homicide detective, after again advising Mosley of his *Miranda* rights, questioned him about a murder which occurred during an unrelated attempted robbery. Mosley made a statement implicating himself in the murder. His statement was admitted into evidence at his trial, and Mosley was convicted of first-degree murder. Mosley's conviction was reversed by the Michigan Court of Appeals, which held that the reinterrogation was a *per se* violation of *Miranda*.[15] The Supreme Court reversed, and rejected the Michigan court's literal interpretation of the "subsequent procedure" passage:

> At the other extreme, a blanket prohibition against the taking of voluntary statements or a permanent immunity from further interrogation, regardless of the circumstances, would transform the *Miranda*

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[13] *Id.* at 473-74 (footnote omitted).

[14] 423 U.S. 96 (1975).

[15] Mosley v. State, 51 Mich. App. 105, 214 N.W.2d 564 (1974).

> safeguards into wholly irrational obstacles to legitimate police investigative activities, and deprive suspects of an opportunity to make informed and intelligent assessments of their interests. Clearly, therefore, neither this passage nor any other passage in the *Miranda* opinion can sensibly be read to create a per se proscription of indefinite duration upon any further questioning by any police officer on any subject, once the person in custody has indicated a desire to remain silent.[16]

The Court concluded that the admissibility of statements elicited from an accused after the accused has exercised his right to remain silent depends "on whether his 'right to cut off questioning' was 'scrupulously honored.' "[17] Mosley had effectively cut off questioning about the robberies, and his right to do so was not violated by the initiation of the murder interrogation, which "focused exclusively on . . . a crime different in nature and in time and place of occurrence from the robberies for which Mosley had been arrested and [previously] interrogated. . . ."[18]

Mosley establishes that a suspect who is interrogated for one crime and exercises his right to remain silent is not thereafter immune from interrogation regarding other crimes. However, it is not yet clear, and the Supreme Court has not decided, if a suspect who had invoked his right to remain silent may thereafter be reinterrogated regarding the crime which was the subject matter of the first interrogation.

The Court again relied on the "subsequent procedure" passage from *Miranda* when, in *Edwards v. Arizona*,[19] it held that the admission of a confession obtained from a defendant after the defendant requested counsel violated the defendant's privilege against self-incrimination. Edwards was arrested for robbery, burglary and first-degree murder. He was advised of and waived his *Miranda* rights, and, during the interrogation, was informed that another suspect had implicated him in the crime. Edwards then expressed a desire to "make a deal," but later stated that he wanted an attorney before doing so. Interrogation ceased, and Edwards was returned to his cell. The next morning, the interrogation resumed when Edwards was told that he "had to talk" to two detectives. Edwards listened to the taped statement of his alleged accomplice, and later made statements implicating himself in the crime.

The majority held "that an accused, such as Edwards, having expressed his desire to deal with the police only through counsel, is not subject to further interrogation by the authorities until counsel has been made available to him, unless the accused himself initiates further communication, exchanges, or conversations with the police."[20]

All the justices agreed that the inculpatory statements elicited as a result of the second interrogation were not the product of a valid waiver of Edwards' right to counsel, and therefore should not have been admitted at his trial. Chief Justice Burger and Justices Rehnquist and Powell concurred in the result, but declined to join the Court's opinion because of the *per se* rule it established.[21] The fact that the police rather than the accused "'initiated a conversation may be relevant to the question of waiver, but it is not the *sine qua non* to the inquiry. The ultimate question is whether there was a free and knowing waiver of counsel before interrogation commenced."[22]

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[16] Michigan v. Mosley, 423 U.S. at 102-03 (footnote omitted).

[17] *Id.* at 103.

[18] *Id.* at 105.

[19] 451 U.S. 477 (1981).

[20] *Id.* at 484-85.

B. *The Interpretation of Dictum to Create a Rule: How to Reconcile* Miranda *and Its Progeny*

The "subsequent procedure" passage from *Miranda*, upon which both *Mosley* and *Edwards* are based, is dictum.[23] The issue of proper reinterrogation was never before the Court in *Miranda* because none of the defendants had been properly interrogated in the first instance. The *Mosley* court took guidance from the passage in *Miranda* and established a workable, flexible rule. The *Edwards* court took the *Miranda* dictum as gospel, and transformed Chief Justice Warren's emphatic words into a *per se* rule which prohibits any police initiation of reinterrogation after a suspect has indicated his desire to consult an attorney. The Court apparently believes that the right to remain silent and the right to counsel are different in nature and therefore require different treatment. The differences between the right to remain silent and the right to counsel, hinted at in *Mosley*,[24] were alluded to by the Court in *Edwards*.[25] The precise scope and nature of these differences remain unclear. The *Edwards* court merely noted that it had "strongly indicated that additional safeguards are necessary when the accused asks for counsel. . . ."[26] Justice White, the author of the *Edwards* opinion, identified a possible difference in his concurring opinion in *Mosley*:

> The question of the proper procedure following expression by an individual of his desire to consult counsel is not presented in this case [*Mosley*]. It is sufficient to note that the reasons to keep the lines of communication between the authorities and the accused open when the accused has chosen to make his own decisions are not present when he indicates instead that he wishes legal advice with respect thereto. The authorities may then communicate with him through an attorney. More to the point, the accused having expressed his own view that he is not competent to deal with the authorities without legal advice, a later decision at the authorities' insistence to make a statement without counsel's presence may properly be viewed with skepticism.[27]

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[21] *Id.* at 488.

[22] *Id.* at 491 (Powell, J., concurring in the result).

[23] *Id.* at 487 (Burger, C.J., concurring in judgement).

[24] 423 U.S. at 101 n.7, 104 n.10.

[25] Edwards v. Arizona, 451 U.S. at 484.

[26] *Id.*

[27] Michigan v. Mosley, 423 U.S. at 110 n.2 (White, J., concurring).

If the difference between the right to counsel and the right to remain silent, as articulated by Justice White, is the basis for the *Edwards per se* rule, the *Mosley* holding is cast into some doubt. The right to the advice of counsel and the right to remain silent during custodial interrogations were formulated by the *Miranda* court to accomplish the same objective: to safeguard the privilege against self-incrimination. What, then, does the defendant express when he invokes his right to remain silent? He elects not to cooperate with the authorities, discuss the charges or assist in the investigation. The accused is as emphatic in his resistance to the investigative efforts of the authorities when he invokes the right to remain silent as when he invokes his right to counsel. Why reinterrogation is absolutely prohibited when the latter right is exercised, but permitted when the former is invoked, is far from clear.

In *Edwards*, the Court was called upon to decide whether the defendant had waived his right to counsel. As noted by Justice Powell in his concurrence, *Edwards* could have been decided upon much simpler grounds: "Edwards was taken from his cell against his will and subjected to renewed interrogation. . . . [I]t clearly was a questioning under circumstances incompatible with a voluntary waiver of the fundamental right to counsel."[28] The majority, however, went beyond the question presented and resolved the issue by suppressing the confession because the police, and not the accused, initiated the second interrogation.

C. *Investigative Gamesmanship as the Legacy of* Miranda

Before *Edwards*, nothing in the prior decisions of the Supreme Court precluded police officers from inquiring "whether a suspect has changed his mind about speaking to them without an attorney."[29] After *Edwards*, police are restrained from talking to an accused who exercises his right to counsel unless the suspect first indicates a willingness to converse with the authorities.[30] It is difficult to find a fifth amendment basis for limiting the police to a degree where it is only proper for the police to listen and not to talk.[31] *Miranda*'s goal of protecting against self-incrimination is not furthered by the strict observance of the *Edwards* rule.

Two recent cases decided by the Colorado Supreme Court demonstrate the legal quagmire that *Miranda* and its progeny have created. In *People v. Connelly*,[32] the accused believed that God directed him to confess to murder or commit suicide. Connelly approached a police officer in downtown Denver and told him that he had killed someone, and that he wanted to tell the police about it. After being advised of his *Miranda* rights, Connelly stated that he understood his rights, waived them, and proceeded to tell the officer the approximate date and location of the homicide. Connelly was advised of his *Miranda* rights a second time, and at his insistence, took two police officers to the scene of the murder. Although he was originally declared incompetent, Connelly was treated and after six months was competent to stand trial. The defense sought to suppress the confession on the ground that, due to his mental illness, neither the statements nor the waiver of his *Miranda* rights were voluntarily made. The Colorado Supreme Court affirmed the trial court's order suppressing the statements, despite the fact that it was Connelly and not the police who initiated the dialogue leading to Connelly's arrest. A majority of the court held that the statements, though volunteered, were involuntary. Two members of the court dissented in *Connelly* and said:

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[28] Edwards v. Arizona, 451 U.S. at 490 (Powell, J., concurring in the result).

[29] *Id.*

[30] It takes little for an accused to "initiate" a conversation with police. *See* Oregon v. Bradshaw, 402 U.S. 1039 (1983) (plurality holding that accused "initiated" conversation with police when he asked, "Well, what is going to happen to me now?").

[31] Edwards v. Arizona, 451 U.S. at 485.

[32] 702 P.2d 722 (Colo. 1985), *rev'd*, 107 S. Ct. 515 (1987). For a critique of the Colorado Supreme Court's decision in *Connelly*, see Note, People v. Connelly: *Taking Confession Law to the Outer Limits of Logic*, 57 U. COLO. L. REV. 909 (1986).

> To satisfy the test of voluntariness, a confession must not be extracted by any sort of threats or violence, nor be obtained by any direct or implied promise, however slight. . . . [A] statement can be suppressed as involuntary only if it has been extracted by police questioning or obtained through improper external force. Statements which a defendant volunteers independent of police questioning or external force should not be subject to suppression under the fifth amendment. . . . while the defendant's motivation for confessing . . . was not tied to police questioning or external pressures of any kind . . . . . While the defendant's mental condition may be introduced at trial to attack the credibility of his confession or to establish non-responsibility for the crime committed, the defendant's mental illness should not preclude a finding that his statement was voluntary for purposes of the fifth amendment.[33]

The Supreme Court recently reversed the state court's decision in *Connelly*.[34] Chief Justice Rehnquist, writing for the Court, held that police coercion, is a necessary predicate to a finding of involuntariness statement under the Due Process Clause. The Chief Justice noted, "The difficulty with the approach of the Supreme Court of Colorado is that it fails to recognize the essential link between coercive activity of the state, on the one hand, and a resulting confession by a defendant, on the other."[35]

In *People v. Spring*,[36] the evidence established that the defendant participated in a murder that had been camouflaged as a "hunting trip" in Colorado. Approximately two months later, the defendant Spring was arrested in Kansas City by federal agents for interstate transportation of firearms and other related offenses. Spring consented to three separate interrogations. Spring was advised of his *Miranda* rights and he signed a written form stating that he understood and waived his rights, and that he was willing to make a statement and answer questions. The agents did not tell him, before obtaining the written waiver, that they were going to ask questions about the Colorado murder. The Colorado Supreme Court held the statements inadmissible because the prosecution could not meet its burden of proving that Spring's waiver was voluntary, knowing, and intelligent. The decision was based on the ground that the agents failed to advise Spring of the precise scope and subject matter of the interrogation. In *Spring*, the dissent quoted the Third Circuit's warning in *Collins v. Bierly*:[37]

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[33] *Id.* at 730-31 (citations and footnote omitted) (Erikson, J., dissenting).

[34] Colorado v. Connelly, 107 S. Ct. 515 (1987).

[35] *Id.* at 521.

[36] 713 P.2d 865 (Colo. 1985), *rev'd*, 107 S. Ct. 85 (1987).

> We have serious reservations about an interpretation of *Miranda v. Arizona* . . . which would require that before custodial interrogation begins, in addition to the mandated declarations, a statement must be made by the police as to the nature of the crime under investigation. That landmark decision was painstakingly specific in listing the basic constitutional rights which the police must propound to a suspect before he is questioned. Nowhere is there the slightest indication that there must be included a warning about the nature of the crime which has led to their interrogation conference, what the penalty is for the offense, what the elements of the offense consist of, and similar matters . . . . In a sense, all of these elements might conceivably enter into an "intelligent and understanding" rejection of an offer for the assistance of counsel, but the simple answer is that *Miranda* does not by its terms go so far. It requires that the accused be advised of his rights so that he may make a rational decision, not necessarily the best one or one that would be reached only after long and painstaking deliberation. Indeed, it may be argued forcefully that a choice by a defendant to forego the presence of counsel at police interrogation is almost invariably an unintelligent course of action. It is not in the sense of shrewdness that *Miranda* speaks of "intelligent" waiver but rather in the tenor that the individual must know of his available options before deciding what he thinks best suits his particular situation. In this context intelligence is not equated with wisdom.[38]

The Supreme Court reversed and held that the defendant validly waived his fifth amendment privilege.[39] The Court, relying on its decision in *Connelly*, held that the waiver was voluntary because there was no evidence of coercive police conduct.[40] The waiver was knowing and intelligent because the defendant understood his right to remain silent and that anything he said could be used against him.[41] "The Constitution does not require that a criminal suspect know and understand every possible consequence of a waiver of the Fifth Amendment privilege."[42]

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[37] 492 F.2d 735, 738-39 (3d Cir.), *cert. denied*, 419 U.S. 877 (1974).

[38] People v. Spring, 713 P.2d at 880-81 (Erickson, J., dissenting).

[39] Colorado v. Spring, 107 S. Ct. 851 (1987).

[40] *Id.* at 857.

[41] *Id.*

[42] *Id.*

The fundamental disagreement between the Colorado Supreme Court and the United States Supreme Court in *Connelly* and *Spring* represents the uncertainties with which the police are confronted in the interrogation of an accused. The relevant inquiry should be whether the accused was advised of his rights as required by *Miranda*, and whether the defendant voluntarily, knowingly, and intelligently waived those rights.

III. SIXTH AMENDMENT AND *MIRANDA*

A. *From* Escobedo *to* Miranda *and Beyond*

Perhaps the greatest inadequacy of *Miranda* and its progeny is the consistent intertwining of the sixth amendment right to counsel, and the prophylactic rules of *Miranda* designed to safeguard the fifth amendment privilege against self-incrimination. The fifth and sixth amendments serve different purposes, yet the distinctions between them are blurred.

In *Escobedo v. Illinois*,[43] the Supreme Court, in a 5-to-4 decision, held that the sixth amendment right to counsel precluded the admission at trial of a defendant's confession made before indictment, without the advice of counsel.

Only two years later, the Court announced its 5-to-4 decision in *Miranda v. Arizona*.[44] *Miranda*, based entirely on the fifth amendment privilege against self-incrimination, created very restrictive limitations on custodial interrogation practices. *Miranda* also created a limited non-sixth amendment right to counsel in certain circumstances in order to safeguard the fifth amendment privilege against self-incrimination. *Miranda* and its many progeny have swallowed the *Escobedo* rule, which is limited to its facts.[45] However, the Court has continued to apply the sixth amendment right to counsel in interrogation and confession cases. For example, in *Brewer v. Williams*,[46] the Court applied the sixth amendment and held inadmissible incriminating statements made by the defendant after he had been arraigned and after police officers had advised his counsel that he would not be interrogated. *Brewer* based its holding on *Massiah v. United States*,[47] a sixth amendment case that predated both *Miranda* and *Escobedo*. The facts in *Brewer* were, in several ways, more appropriate for *Miranda* analysis under the fifth amendment than for the sixth amendment rationale adopted by the Court.

Two cases in the 1985-86 term clearly show that fifth and sixth amendment rights are being unpredictably intertwined by the Court in interrogation and confession cases. In *Moran v. Burbine*,[48] the Court determined that the failure of police officers to inform a defendant that an attorney had attempted to contact him at the police station during his interrogation did not invalidate the defendant's confessions. The Court reached its decision after analyzing the defendant's arguments under both the *Miranda* fifth amendment right to counsel and the express sixth amendment right to counsel.

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[43] 378 U.S. 478 (1964).

[44] 384 U.S. 436 (1966).

[45] Kirby v. Illinois, 406 U.S. 682 (1972).

[46] 430 U.S. 387 (1977).

[47] 377 U.S. 201 (1964).

[48] 106 S. Ct. 1135 (1986).

In *Michigan v. Jackson*,[49] the defendants, during their arraignments, had requested appointment of counsel. Before they could consult with counsel, police officers questioned them and obtained confessions. The Supreme Court applied the restrictions of *Edwards v. Arizona*,[50] a fifth amendment case, to the sixth amendment claim in *Jackson*. The Court reasoned the *Edwards* rationale applied even more strongly when a defendant invoked the right to counsel after the sixth amendment attached at arraignment.[51] The Court invalidated the confessions, stating that "the Sixth Amendment right to counsel at a post-arraignment interrogation requires at least as much protection as the Fifth Amendment right to counsel at any custodial interrogation."[52] Justice Rehnquist, joined by Justices Powell and O'Connor, dissented, stating that it is logically inconsistent to apply the prophylactic rule of *Edwards* in the sixth amendment context in view of the Court's previous cases holding that the sixth amendment right to counsel attaches automatically and need not be expressly invoked by the defendant.

Jackson, amongst others, demonstrates the doctrinal confusion that has resulted from the Court's entanglement of the fifth and sixth amendment rights to counsel. The Court has ignored the substantive and procedural differences between the two amendments.[53] "Interrogation" under the sixth amendment depends on whether the police "deliberately and designedly set out to elicit information."[54] However, fifth amendment "interrogation" is defined as express questioning, words, or actions that the police should know are reasonably likely to elicit incriminating responses.[55] The Court's decisions have lead to significant uncertainty in the law of interrogations and confessions.[56]

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[49] 106 S. Ct. 1404 (1986).

[50] 451 U.S. 477 (1981).

[51] *See* United States v. Gouveia, 467 U.S. 180 (1984) (sixth amendment attaches when adversary judicial proceedings are initiated).

[52] Michigan v. Jackson, 106 S. Ct. at 1409.

[53] Authorities on the fifth and sixth amendment rights to counsel in the context of interrogations and confessions include: L. BAKER, MIRANDA: CRIME, LAW AND POLITICS (1983); W. LAFAVE & J. ISRAEL, CRIMINAL PROCEDURE §§ 6.1-6.10 (1984); D. NISSMAN, E. HAGEN & P. BROOKS, LAW OF CONFESSIONS (1980); Browning, *Moran v. Burbine: The Magic of Miranda*, 72 A.B.A.J. 58 (1986); Caplan, *Questioning Miranda*, 38 VAND. L. REV. 1417 (1985); Gardner, *The Emerging Good Faith Exception to the Miranda Rule — A Critique*, 35 HASTINGS L.J. 429 (1984); Grano, *Voluntariness, Free Will and the Law of Confessions*, 65 VA. L. REV. 859 (1979); Robinson, *The Criminal Procedure Political Connection: Miranda Before and After*, 1985 AM. B. FOUND. RESEARCH J. 419; Schulhofer, *Confessions and the Court*, 79 MICH. L. REV. 865 (1981); Schrock, Welsh & Collins, *Interrogational Rights — Reflections on Miranda v. Arizona*, 52 S. CAL. L. REV. 1 (1978); White, *Police Trickery in Inducing Confessions*, 127 U. PA. L. REV. 581 (1979); Reidinger, *Viva Miranda*, 72 A.B.A.J. 88 (Oct. 1, 1986); Machlis, *Criminal Procedure II: The Privilege Against Self-Incrimination*, 1985 ANN. SURV. AM. L. 289 (1986); White, *Defending Miranda: A Reply to Professor Caplan*, 39 VAND. L. REV. [illegible] (1986).

[54] Brewer v. Williams, 430 U.S. at 399 ("interrogation" depends on officer's subjective intent).

[55] Rhode Island v. Innis, 446 U.S. 291, 300 (1980) (interrogation does not depend on officers' subjective intent).

[56] Two issues regarding the application of the sixth amendment right to counsel remain unresolved

IV. CONCLUSION

The constitutional procedures imposed on law enforcement officers to protect the privilege against self-incrimination are still not fully defined. *Miranda* has created constitutional limitations on police interrogation practices that are largely formalistic, but has not provided the prophylactic rule insuring that only free and voluntary confessions are admitted in a criminal trial. *Miranda* has neither enhanced the fifth amendment rights guaranteed to an accused nor foreclosed overzealous police interrogation practices.

Our American criminal justice system depends upon an adversarial trial to insure the verity of the truth-finding process. *Miranda* has done little to protect the accused or to limit police interrogation. Voluntary confessions should be admissible. Involuntary, coerced confessions must be suppressed. The *Miranda* rule does not provide the proper criteria or a meaningful basis for excluding coerced custodial confessions.

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by the Supreme Court. The Court has not decided what substantive requirements are prerequisites to a waiver of the sixth amendment right. There are some indications that a stricter standard may be applied to sixth amendment waivers than in fifth amendment cases. Wyrick v. Fields, 459 U.S. 42 (1982) (Marshall, J., dissenting). In addition, the Court has not determined whether statements obtained in violation of the sixth amendment right to counsel are admissible for the same exceptional purposes that have been applied to statements obtained in violation of *Miranda*. *Compare, e.g.*, Harris v. New York, 401 U.S. 222 (1971) (statements obtained in violation of *Miranda* can be used to impeach criminal defendant who takes stand), *with* United States v. Brown, 669 F.2d 585 (2d Cir. 1983) (statements obtained in violation of sixth amendment are not admissible for impeachment purposes).

Justice **Erickson**. As you will recall, the *Miranda* case has a fourfold warning that is required. That followed the *Escobedo* case. The *Escobedo* case was predicated primarily on the sixth amendment. The *Miranda* case centers on both the fifth and the sixth amendment.

The complaint I made, and caused me to write the article on the unfilled promise of *Miranda* v. *Arizona*, is the confusion that has come about in interpreting this case and in not giving the rule definitive borders, much of what we're talking about on the Canon 2 of the ABA Canons of Judicial Conduct.

The example I used was in the case of *Michigan* v. *Mosely*. The Supreme Court of the United States dealt with a case where an individual had been arrested and given the *Miranda* warnings on two robbery cases.

After having been given that warning, he was then questioned by a different officer, given the *Miranda* warning, and admitted his participation in a murder. The Supreme Court of the United States ignored the language that had been included by Justice Warren in the original *Miranda* decision and held that that was proper; that they could offer the confession in that case relating to the interrogation on the murder case.

Then we had *Edwards* v. *Arizona* where an individual was interrogated and invoked his rights under *Miranda* v. *Arizona*, saying that he wanted to talk to counsel. After that occurred, the police interrogated him and obtained a confession.

The Supreme Court of the United States, in answering that issue, said, no, this confession is not admissible because of the fact that he invoked his right to counsel and he did not initiate the reinterrogation.

So the two cases are inconsistent because the waiver that is required under the fifth amendment in *Michigan* v. *Mosely* and the sixth amendment under the *Edwards* case that is both a sixth and fifth amendment issue is in conflict.

We had the case in Colorado that was reviewed by the Supreme Court of the United States and reversed where an individual named Connely came to Colorado and the first thing that he did after he got to Colorado was to contact a police officer that was looking after a party, and he came up and he said he murdered a woman, and gave-the date, at a certain place and time.

The officer immediately gave him the *Miranda* warning and called the police station to find out if there had been such a murder and there had been. The Supreme Court of Colorado, over what I like to think was a strong dissent, took exception to the suppression of the statement that he made to the police officer which was volunteered.

The statement was made because he said God made me make the statement; I had my choice of committing suicide or reporting to the police officer. The Supreme Court of the United States said that it was not a statement that recognized——

Senator **Thurmond**. Excuse me just a minute. I have got to go over to the floor. They are considering a death penalty amendment and I intend to speak on it; I am in favor of the death penalty. I am going to have to leave at this time. I hope you will be confirmed.

Mr. Chairman, if I do not get back, I think all these people who are here today are well qualified and I will support them when the time comes. Thank you very much for your courtesy.

Senator SIMON. Thank you, Senator Thurmond.

We did not mean to interrupt you in the middle there.

Justice ERICKSON. I understand, Senator. I know you have a busy schedule.

Senator SIMON. Yes.

Justice ERICKSON. And so if I have talked too much, Mr. Chairman, I appreciate the courtesies you have extended me.

Senator SIMON. Thank you very, very much, Justice Erickson.

Justice ERICKSON. May I leave these articles?

Senator SIMON. You may, and we thank you very, very much.

[Written questions to Justice Erickson follow:]

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May 20, 1988

Honorable William H. Erickson
Colorado Supreme Court
2 East 14th Avenue, Room 465
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Dear Justice Erickson:

In order to supplement the Judiciary Committee's record on your nomination to be United States District Judge, I am forwarding, on behalf of the Committee, a set of written questions.

Please provide written answers to these questions, accompanied by your attestation of the accuracy of your answers. Please deliver your answers to the Judiciary Committee in Room SD-224, Dirksen Senate Office Building, Washington, DC 20510. Any questions concerning this request should be directed to Andrew Rainer, Investigative Counsel to the Committee, at (202) 224-8191.

In addition to the questions submitted today, the Committee may have additional questions at a later date. Your continued cooperation in responding to these questions is greatly appreciated.

Sincerely,

Paul Simon

Paul Simon
United States Senator

ADDITIONAL QUESTIONS FOR WILLIAM H. ERICKSON

1. If you are confirmed for a position on the District Court, you would be going from the somewhat rarified atmosphere of an appellate tribunal to an extremely busy trial court, where you will have to deal on a daily basis with lawyers, jurors, witnesses, pro se litigants. Why do you want to make that move at this point in your life?

2. The District Court to which you have been nominated is currently one of the most overburdened federal trial courts in the country. At the hearing on your nomination on May 16, you indicated that it might be necessary to drop some of your extrajudicial activities in order to help clear up the District Court's backlog. Which activities in particular do you anticipate you would drop?

3. You have written that there are 22 "commandments" to being a good judge, including that a good judge "should have the ability to recognize and avoid conflicts which might compromise the integrity of the court or bear even the slightest suggestion of impropriety." Do you feel that you lived up to this commandment in your handling of a disciplinary matter involving attorney Lawrence Rotenberg?

4. In 1979, you wrote an opinion for the Supreme Court in which you criticized Rotenberg for misconduct in the handling of a criminal case. Shortly before your opinion was released, you called the trial judge in the criminal case (Judge Fullerton) and discussed with him the appropriateness of initiating a grievance complaint against Rotenberg. What did you say in that conversation about the filing of a grievance against Rotenberg?

5. When Judge Fullerton did in fact file a grievance complaint against Rotenberg, Rotenberg retained Jim Morrato, your former law partner, to represent him in the grievance proceeding. At one point while the grievance matter was pending, you spoke with Morrato about the matter. Do you think it was appropriate to speak with Morrato, ex parte, on a case that would as a matter of course come before your court for decision?

6. Was it appropriate for you to rule on the Rotenberg matter at all, in light ot the fact that, in 1979, when Rotenberg retained Morrato, there was still correspondence going back and forth between the Morrato firm and your attorneys (copy attached) concerning monies which you claimed were due to you from your former firm?

7. Before the Rotenberg case came to your court in 1981, did you rule on any cases in which the Morrato firm served as counsel? If so, please provide details, including case name and number, a brief description of the case, and the names of other counsel involved in the case. Also, please provide a list of all Supreme Court cases handled by the Morrato firm before or after 1981 in which you did recuse yourself.

8. How do you respond to the suggestion that was raised in the case of Morrato v. Rotenberg that the claim you were pursuing against the Morrato firm was in essence a claim for "goodwill" and "future earnings," which are not properly recoverable under Colorado ethical standards? In responding to this question, please note that the Morrato firm maintained that you were not entitled to any fees from a large suit known as the "Greatwood case" and that you were fully compensated for the capital you had contributed to the law firm.

9. A letter written to you by attorney Paul Renner in October 1977 raises the suggestion that certain arrangements between you and the Morrato firm may have violated Colorado disciplinary rules dealing with the division of fees among lawyers. How do you respond to that suggestion?

10. In January 1978, the Colorado Supreme Court suspended Rollie Rogers, who was then serving as Public Defender for the State of Colorado. Although you did not participate in the Court's decision to suspend Rogers, you were publicly identified as one of two justices who had investigated the Public Defender's office prior to the suspension. What was your role in Rogers' suspension? Did you recommend that Rogers be suspended? Did you release to the public any information charging Rogers with misconduct?

11. In your testimony before the Committee, you provided some clarification of your recent article on the Supreme Court decision in Miranda v. Arizona and your statement that "the Miranda rule does not provide the proper criteria or a meaningful basis for excluding coerced confessions." In light of the problems you have identified with Miranda, is it your view that the Miranda rule should be abandoned? Would you have any trouble enforcing it as a District Judge?

MORRATO, GUECK & COLANTUNO
PROFESSIONAL COMPANY
ATTORNEYS AT LAW
1100 CAPITOL LIFE CENTER
16TH AND GRANT
DENVER, COLORADO 80203

JAY L. GUECK
JOSEPH F. COLANTUNO
JAMES J. MORRATO
I. THOMAS BIEGING

JAMES L. HAMMER
ROGER L. KEITHLEY
JOHN E. BURRUS

IVAN D. FUGATE
OF COUNSEL
TELEPHONE 861-2100
AREA CODE 303

April 12, 1979

Mr. James A. Clark
500 Capitol Life Center
16th and Grant
Denver, Colorado 80203

Dear Jim:

Sometime ago we advised you that this office was under an income tax audit by the Internal Revenue Service for the year 1977. The revenue agent who conducted the field audit has recommended in his report of examination that there should be no changes to our corporate tax return. The agent, however, also audited our withholding tax returns, Form 941, and has written a report that we improperly handled the payment to Justice Erickson in the amount of $18,000. The agent concluded that the money was compensation for his services as a member of this office, and has advised us that we owe additional taxes in the amount of $3,993.06.

Last Thursday I executed a consent form, Form 2504, a copy of which is enclosed, so that within the next 60 days we expect to receive an invoice from the IRS for the amount of money due. You will note from the consent form that we have reserved the right to challenge the findings of the examining agent and to claim that we had no responsibility to pay withholding taxes on account of moneys distributed to Justice Erickson.

A while ago I understood that the only open matter between us and Justice Erickson was a contingent liability on account of the dispute between Justice Erickson and the Hindry & Meyer firm. We had agreed not to plead the statute of limitations if liability was visited upon Justice Erickson on account of certain fees ultimately paid to us for cases that originated at the firm of Hindry, Erickson & Meyer. We now understand that that matter has been settled and that a positive cash amount was paid to Justice Erickson and that matter is now closed. The settlement with Hindry & Meyer should have concluded the matter between ourselves and Justice Erickson. Apparently Justice Erickson, for some reason, thinks otherwise. Jim, we need to have the matter disposed of once and for all. Things keep changing here, and others besides the three of us now have a right against the income of the firm.

Exhibit B

It seems to me that after we pay the tax bill three things can happen: 1) we can forget it; or 2) we can sue for a refund on the basis that Justice Erickson is not our employee; or (3) Justice Erickson can claim a credit from the IRS against his taxes and receive a refund of approximately $3,000.

We herewith agree that when we make the payment to the IRS we will forego any claim to a refund and permit Justice Erickson to have the full benefit of that payment if his acceptance of this sum will mean the matter is final.

We have had a short conference among ourselves on the matter, and everyone here would appreciate it if you would relay our position on to Justice Erickson.

Hope you have a good Easter and enjoy your vacation.

Sincerely,

Joseph F. Colantuno

Joseph F. Colantuno

Enclosure

JFC:mlb

Supreme Court
STATE OF COLORADO
STATE JUDICIAL BUILDING
2 EAST FOURTEENTH AVENUE
DENVER, COLORADO 80203
(303) 837-3747

WILLIAM H. ERICKSON
JUSTICE

May 24, 1988

The Honorable Paul Simon
United States Senator
United States Senate
Committee on the Judiciary
Dirksen Senate Office Building
Room SD-224
Washington, D.C. 20510

Dear Senator Simon:

Pursuant to your letter of May 20, 1988, I have answered the written questions you submitted to me and enclose the answers with this letter. In your letter you refer to possible additional questions and I can assure you that I will answer those as promptly as possible if you deem additional questions are necessary.

Sincerely yours,

William H. Erickson

WHE:ps
Encl.

Interrogatories propounded to Justice William H. Erickson

1. If you are confirmed for a position on the District Court, you would be going from the somewhat rarified atmosphere of an appellate tribunal to an extremely busy trial court, where you will have to deal on a daily basis with lawyers, jurors, witnesses, *pro se* litigants. Why do you want to make that move at this point in your life?

Before I became an appellate judge, I spent twenty years as a trial lawyer. My practice revolved around the preparation and trial of criminal and civil cases. I have written on trial practice, taught trial advocacy, and have known all of the joys and disappointments of being a trial lawyer. Approximately 75% of my practice was in the federal court. I would very much like to experience the challenge of being a trial judge.

Senior United States District Judge Alfred A. Arraj is one of my closest friends and I admire him and what he has done as a district court judge. My goal would be to emulate his accomplishments. I have always thrived on hard work and believe that I could adjust to the role of trial judge without great difficulty. The trial court would also provide me with an opportunity to utilize some of the recommendations of the American Bar Association Action Commission to Reduce Court Cost and Delay. I served on that commission and would endeavor to implement the recommendations which were made to reduce court cost and delay.

2. The District Court to which you have been nominated is currently one of the most overburdened federal trial courts in the country. At the hearing on your nomination on May 16, you indicated that it might be necessary to drop some of your extrajudicial activities in order to help clear up the District Court's backlog. Which activities in particular do you anticipate you would drop?

I would no longer lecture on constitutional law, write law review articles, or contribute to the American Bar Association's Standards of Criminal Justice. I have already curtailed my activities with the American Bar Association and will continue to do so. I do, however, plan to continue the updating of the book that I co-authored for Matthew Bender on criminal law and procedure

3. You have written that there are 22 "commandments" to being a good judge, including that a good judge "should have the ability to recognize and avoid conflicts which might compromise the integrity of the court or bear even the slightest suggestion of impropriety." Do you feel that you lived up to this commandment in your handling of a disciplinary matter involving attorney Lawrence Rotenberg?

At the time, I did not doubt the propriety of my acts, and I hope that I lived up to the commandment. However, guided by hindsight, I would not have accepted the assignment of the case and formalized the stipulation that Morrato and Rotenberg entered into with the grievance committee.

4. In 1979, you wrote an opinion for the Supreme Court in which you criticized Rotenberg for misconduct in the handling of a criminal case. Shortly before your opinion was released, you called the trial judge in the criminal case (Judge Fullerton) and discussed with him the appropriateness of initiating a grievance complaint against Rotenberg. What did you say in that conversation about the filing of a grievance against Rotenberg?

On March 26, 1979, People v. Blalock, 592 P.2d 406 (Colo. 1979), was announced. When the opinion was voted out of conference, the supreme court, en banc, directed me to notify Judge Fullerton that the opinion was going to be released within a few days. I told Judge Fullerton that the opinion was to be released, but did not advise him of what the court decided. The Blalock opinion (Exhibit A) is attached as a part of the answer to the interrogatory since it provides the basis for my advising Judge Fullerton of the court's actions.

Canon 3 (B)(3) of the Colorado Code of Judicial Conduct provides: "A judge should take or initiate appropriate disciplinary measures against a judge or lawyer for unprofessional conduct of which the judge may become aware." The underlined portions of the Blalock opinion indicate that Judge Fullerton had considered filing a disciplinary complaint, and the court was of the opinion that notice was necessary to prevent Judge Fullerton from violating the Canon.

The record in the Blalock case reflected an outrageous attempt by Rotenberg to obstruct the administration of justice. Rotenberg represented Blalock who was charged with sexual assault, kidnapping, and attempted murder. Rotenberg advised his client that he had sexual intercourse with the victim, and that she had fellated him. He also contacted the victim and endeavored to get her to drop or reduce the charges. In my view, the violation went beyond an ethical violation and involved criminal conduct.

5. When Judge Fullerton did in fact file a grievance complaint against Rotenberg, Rotenberg retained Jim Morrato, your former law partner, to represent him in a grievance proceeding. At one point while the grievance matter was pending, you spoke with Morrato about the matter. Do you think it was appropriate to speak with Morrato *ex parte*, on a case that would as a matter of course come before your court for decision?

My conversation with Jim Morrato pertaining to his defense of Rotenberg before the grievance committee was very brief and did not involve a discussion of the issues before the Grievance Committee. When he advised me that he represented Rotenberg, I told him that Rotenberg was entitled to the best counsel he could get and that he was the best. I told him I would disqualify myself from the case if there were controverted issues. We did not discuss the merits or any substantive aspect of the case other than the fact that I would disqualify myself if there was any contested or controverted issue.

6. Was it appropriate for you to rule on the Rotenberg matter at all, in light of the fact that, in 1979, when Rotenberg retained Morrato, there was still correspondence going back and forth between the Morrato firm and your attorneys (copy attached) concerning monies which you claimed were due to you from your former firm?

The procedures of the court in the assignment and writing of disciplinary opinions may clarify this issue. When a grievance is filed against an attorney, it is submitted to the Supreme Court Grievance Committee. After an investigation of the charges is made, the matter is submitted to an inquiry panel to determine whether reasonable grounds exist for discipline. C.R.C.P. 241.11. Thereafter, a complaint is filed and the respondent to the complaint files an answer. C.R.C.P. 241.13. The issues are heard by a hearing board that makes findings of fact and recommendations. C.R.C.P. 241.14. The hearing board's findings and recommendations are reviewed by a hearing panel and then the report, findings, and recommendations are submitted to the Supreme Court and circulated to each member of the court. See C.R.C.P. 241.15. After each member of the court has considered the report, findings, and recommendations, the case is discussed en banc and a vote is taken. The Chief Justice then assigns the case to a member of the court for an opinion. At the time, routine grievance matters were assigned to me or to Justice Lohr because of our liaison duties with the Grievance Committee. Since the Rotenberg case was submitted on stipulated findings and recommendations that were unanimously approved by the court, the Chief Justice assigned the case to me to formalize the stipulation. People v. Rotenberg, 635 P.2d 220 (Colo. 1981). The underlined portions of the attached Rotenberg opinion (Exhibit B) indicate that the court adopted the findings and recommendations of the Grievance Committee and that writing the opinion merely formalized the stipulation.

The letter from Joe Colantuno to James Clark (April 12, 1979), reflects that a tax dispute existed that was resolved at about the time Morrato accepted employment from Rotenberg. On the April 13, 1979, I wrote a letter to my accountant, David Cribari (Exhibit C), in which I noted that my partnership liquidation problems with Morrato's firm were apparently concluded. If my memory is correct, Jim Morrato entered into a contract to represent Rotenberg on April 16, 1979. Therefore, strictly speaking, the fee dispute was resolved before Morrato contracted to represent Rotenberg. In retrospect, I would disqualify myself to avoid even the slightest appearance of impropriety even though it was a routine, uncontested matter.

7. Before the Rotenberg case came to your court in 1981, did you rule on any cases in which the Morrato firm served as counsel? If so, please provide details, including case name and number, a brief description of the case, and the names of other counsel involved in the case. Also, please provide a list of all Supreme Court cases handled by the Morrato firm before or after 1981 in which you did recuse yourself.

The only case I participated in before Rotenberg was City and County of Denver v. District Court, 607 P.2d 985 (1980) (79SA424). The opinion was issued on March 10, 1980. An original proceeding was brought by the City and County of Denver and the chief of the police department challenging a ruling of the district court which partially granted motion to compel production of documents. Justice Rovira, writing for the Colorado Supreme Court, held that where the record did not indicate the basis for a partial granting and partial denial of discovery with respect to materials sought to be inspected by the plaintiff, the case would be remanded with directions to court to conduct a second in camera inspection of those materials to make appropriate findings, and to grant or deny discovery, subject to appropriate protective orders. The rule was made absolute and the case was remanded. I joined the court in this unanimous opinion.

The attorneys involved in the case were: Halaby & Bahr, Theodore S. Halaby, Michael P. Bahr, Denver, for the petitioners; Morrato, Gueck & Colantuno, P.C., James L. Hammer, Denver, for respondents District Court, Judge Brooks, and Opal Scott; Girsh & Rottman, Solomon Girsh and Sheldon, Bayer, McLean & Glasman, P.C., Richard C. McLean, Denver, for respondents Louis Ray, John Porter, Jr., and Turning Point, Inc.

Case in which I participated:

Prestige Homes, Inc. v. Legouffe, 658 P.2d 850 (Colo. 1983)

Ranger Ins. Co. v. District Court In and For City and County of Denver, 647 P.2d 1229 (Colo. 1982)

People v. Rotenberg, 635 P.2d 220 (Colo. 1981)

City and County of Denver v. District Court for Second Judicial Dist., 199 Colo. 303, 607 P.2d 985 (1980)

Cases in which I did not participate:

Roderick v. City of Colorado Springs, 193 Colo. 104, 563 P.2d 3 (1977)

Valley Development at Vail, Inc. v. Warder, In and For Eagle County, 192 Colo. 316, 557 P.2d 11080 (1976)

Billings v. Buchanan, 192 Colo. 32, 555 P.2d 176 (1976)

People v. Parent, 190 Colo. 76, 543 P.2d 1241 (1975)

Berge v. Berge, 189 Colo. 103, 536 P.2d 1135 (1975)

People v. Xericos, 186 Colo. 21, 525 P.2d 415 (1974)

People v. Mazza, 182 Colo. 166, 511 P.2d 885 (1973)

Wheeler v. District Court In and For Adams County, 180 Colo. 275, 504 P.2d 1094 (1973)

Norman v. People, 178 Colo. 190, 496 P.2d 1029 (1971)

In re Magtag's Estate, 175 Colo. 68, 485 P.2d 730 (1971)

8. How do you respond to the suggestion that was raised in the case of Morrato v. Rotenberg that the claim you were pursuing against the Morrato firm was in essence a claim for "goodwill" and "future earnings," which are not properly recoverable under Colorado ethical standards. In responding to this question, please note that the Morrato firm maintained that you were not entitled to any fees from a large suit known as the "Greatwood case" and that you were fully compensated for the capital you had contributed to the law firm.

When I assumed my duties as a Supreme Court Justice on February 3, 1971, I turned over all of the assets and all of the cases that I had, after receiving the approval of my clients, to the new firm of Morrato, Gueck and Colantuno, which took over the office space that had been occupied by William H. Erickson, P.C. All of the capital in the Morrato firm was provided by me. At the time I became a judge, we had a tentative agreement on the division of the contingent fee in the Greatwood case and the basis on which Jay Gueck would assume my responsibilities. The money I was to receive was based on my bringing the case into the firm and then performing a significant amount of work on it. For many years I specialized in the prosecution and defense of cases involving claims for personal injuries and property damage resulting from propane gas explosions. In my view, when the propane gas explosion that caused the damages in the Greatwood case was concluded, bringing what I believe is the largest fee the firm of Morrato, Gueck and Colantuno ever received, the firm ignored our agreement. The Greatwood fee was approximately $115,000 which was a substantial amount in 1972.

My lawyers were Jim Clark and Paul Renner. Paul Renner advised me to abandon part of my claims and I did. Joe Colantuno continued to seek further concessions and his actions delayed the final accounting. I believe that the unique factual background behind our dispute prevented my claim for an accounting from falling into the "good will" and "future earning" categories, but I nevertheless followed the legal advice of Paul Renner.

9. A letter written to you by attorney Paul Renner on October 7, 1977, raises the suggestion that certain arrangements between you and the Morrato firm may have violated Colorado disciplinary rules dealing with the division of fees among lawyers. How do you respond to that suggestion?

While the letter from Paul Renner may have raised the suggestion that certain arrangements between the Morrato firm and me may have violated Colorado disciplinary rules, Renner cites no authority to support such a view. In his letter he stated:

> No reported cases have been located by our research which assist us in determining whether your efforts to participate in the Greatwood fee is contrary to those ethical considerations and disciplinary rules. We also note the diametrically opposed philosophies expressed in the Colorado Ethics Committee Opinion and the American Bar Association Formal Opinion.
>
> We do not know whether the disciplinary rules and ethical considerations of the Canons of Professional Responsibility establish a standard of civil professional responsibility which would prevent or prohibit you from seeking to share the Greatwood fee, because our research does not disclose any precedent authority in this regard.

Renner's letter cites Opinion number 53 of the Ethics Committee of the Colorado Bar Association. I do not believe this opinion is dispositive because my arrangement with the Morrato firm did not include future earnings or good will. Moreover, that ethical opinion was adopted on June 29, 1984 -- three and one-half years after I left my private practice. In my view, Paul Renner's recommendation of October 7, 1977, that I not file a complaint, was based on legal analysis, not an ethical analysis.

10. In January 1978, the Colorado Supreme Court suspended Rollie Rogers, who was then serving as Public Defender for the State of Colorado. Although you did not participate in the Court's decision to suspend Rogers, you were publicly identified as one of two justices who had investigated the Public Defender's office prior to the suspension. What was your role in Rogers' suspension? Did you recommend Rogers be suspended? Did you release to the public any information charging Rogers with misconduct?

Justice James Groves of the Colorado Supreme Court was the Chairman of the Public Defenders Committee, and I served with him on that committee. Allegations were made, inter alia, that the Public Defender was improperly charging the state for trips that did not involve his official duties and that he was using alcohol excessively. We were also advised by two members of the Public Defender's staff that the head of the Denver Public Defender's office was carrying on an affair with the Deputy State Public Defender and that morale was at a low ebb in the Denver Public Defender's office. The affair resulted in both lawyers being away from their office for several hours each day. The female participant in the affair was married to the administrative aide to the governor, which provided an additional dimension to the problem. Jim Groves and I advised Rollie Rogers that he should straighten out his office and break up the affair. Several weeks later Rogers advised us that he was not going to do anything about the affair. Jim Groves reported Rogers' reply to the Court in an en banc conference and recommended that Rogers be suspended, and the court voted to suspend Rogers. I was present at both meetings with Rogers and I concurred with Groves' recommendation. Groves and I did not vote. I released no information to the public or the news media relative to the suspension of the Public Defender or any other aspect of his service as Public Defender.

11. In your testimony before the Committee, you provided some clarification of your recent article on the Supreme Court decision in Miranda v. Arizona and your statement that "the Miranda rule does not provide the proper criteria or a meaningful basis for excluding coerced confessions." In light of the problems you have identified with Miranda, is it your view that the Miranda rule should be abandoned? Would you have any trouble enforcing it as a District Judge?

The Unfulfilled Promise of Miranda v. Arizona, 24 Am. Crim. L. Rev. 291 (1987), was written to demonstrate that a bright line test did not emerge from the opinion. The article reviews the Miranda decision to point out that the United States Supreme Court has backed away from some of the language in the opinion relating to subsequent questioning or reinterrogation. The confusion created by Michigan v. Mosely, 423 U.S. 96 (1975), and Edwards v. Arizona, 451 U.S. 477 (1981), reflects the United States Supreme Court's election not to follow the original opinion and its broad language. As a result, both the accused and law enforcement personnel have been unable to predict what constitutes proper reinterrogation procedure.

It is not for a district court judge to determine whether Miranda should be abandoned -- that is an issue for the United States Supreme Court. As a district judge, I would follow Miranda and do my best to reconcile the somewhat inconsistent progeny of Miranda. Copies of the article have been provided to the Senate Judiciary Committee.

STATE OF COLORADO)
) ss.
City & County of Denver)

I, William H. Erickson, being first duly sworn and upon my oath, state that the answers to the foregoing interrogatories by me subscribed are true.

William H. Erickson
William H. Erickson

Subscribed and sworn to before me this 24th day of May, 1988.

Carolyn Kay [illegible]
Notary Public
2 E. 14th Ave
Denver, Co 80203
Expires: 12-29-88

abuse of discretion in the discharge of a purely ministerial act. *Creech v. State Department of Revenue, Motor Vehicle Division,* 190 Colo. 174, 544 P.2d 683 (1976).

For the reasons stated above, we affirm the judgment of the district court.

CARRIGAN, J., does not participate.

The PEOPLE of the State of Colorado,
Plaintiff-Appellant,

v.

Hugh BLALOCK, Defendant-Appellee.

No. 27802.

Supreme Court of Colorado,
En Banc.

March 26, 1979.

Postconviction relief was granted by the District Court, Denver County, Leonard P. Plank, J., and the People appealed. The Supreme Court, Erickson, J., held that in representing a defendant charged with attempted murder, first-degree sexual assault and second-degree kidnapping, conflict of interest arising out of defense counsel's previous sexual liaison with the victim was apparent from the record, and in view also of the fact that any jury would have been incensed by testimony which was presented on behalf of defense, defendant was not provided reasonably effective assistance of counsel but, on the contrary, representation fell into the category described as being a sham and a farce.

Affirmed.

1. Attorney and Client ⚿32

Economic pressure applied by defendant's counsel, who had agreed to represent defendant for $1,500 and who had received $800 or $900 and who had interviewed complaining witness but had done little more and who refused to return any part of money received so that defendant could retain another lawyer was improper. U.S.C.A.Const. Amend. 6.

2. Criminal Law ⚿641.10(1)

Right to counsel is absolute, but there is no right to particular counsel, and same was especially true where defendant's insistence on representation by particular lawyer could cause ethical conflicts which were so hampering that effectiveness of counsel's assistance was necessarily called into question. U.S.C.A.Const. Amend. 6.

3. Criminal Law ⚿641.13(1)

Court when faced with claim of ineffective assistance of counsel must determine whether advice was within range of competence demanded of attorneys in criminal cases and whether assistance rendered demonstrated faithful representation of interest of client. U.S.C.A.Const. Amend. 6.

4. Criminal Law ⚿641.13(2)

In representing defendant charged with attempted murder, first-degree sexual assault and second-degree kidnapping, conflict of interest arising out of defense counsel's previous sexual liaison with victim was apparent from record, and in view also of fact that any jury would have been incensed by testimony which was presented on behalf of defense, defendant was not provided reasonably effective assistance of counsel but, on contrary, representation fell into category described as being sham and farce. Colo.R.Crim.P. rule 35(b); C.R.S. '73,

EXHIBIT A

18-2-101, 18-3-302, 18-3-402, 18-3-407; U.S.C.A.Const. Amend. 6.

5. Criminal Law ⇨998(8)

Where it was apparent from showing at hearing on motion for postconviction relief that right to effective assistance of counsel had been denied, postconviction relief was properly granted. Colo.R.Crim.P. rule 35(b); U.S.C.A.Const. Amend. 6.

Dale Tooley, Dist. Atty., O. Otto Moore, Asst. Dist. Atty., Brooke Wunnicke, Chief Appellate Deputy Dist. Atty., Denver, for plaintiff-appellant.

Daniel T. Smith, Denver, for defendant-appellee.

ERICKSON, Justice.

The district attorney has filed a direct appeal from a district court order which granted the defendant's motion for post-conviction relief, pursuant to Crim.P. 35(b), and ordered a new trial. We affirm.

Blalock was charged in a three-count information with attempted murder (section 18-2-101, C.R.S.1973), first-degree sexual assault (section 18-3-402, C.R.S.1973), and second-degree kidnapping (section 18-3-302, C.R.S.1973). The defendant pled not guilty, and trial was to a jury.

Before the case was submitted to the jury, the attempted murder charge was dismissed, and the defendant was convicted by the jury of first-degree sexual assault and second-degree kidnapping. A concurrent sentence of not less than eight nor more than twelve years in the Colorado state penitentiary was imposed. The defendant has served more than two years of his sentence. He was released on bail after a new trial was ordered.

The defendant's motion for post-conviction relief was based upon the fact that his defense counsel had sexual intercourse with the complaining witness prior to the time that he undertook to represent the defendant and had a conflict of interest which denied the defendant effective assistance of counsel. *U.S.Const.*, Amend. VI.

The lawyer, Lawrence C. Rotenberg, after his second interview with the defendant, advised him of his prior sexual relations with the complaining witness or victim and told the defendant that under no circumstances could the sex history of the victim be gone into in the defense of his case. However, he expressed the opinion that his previous affair with the victim would be an advantage when it came to cross-examination and the overall defense of the case.

Three different district judges have reviewed the conduct of defense counsel. At an early stage, the Honorable Robert Fullerton pointed out the obvious impropriety and the conflict to Rotenberg. Rotenberg's background with the victim came to the attention of the court after Rotenberg interviewed the victim. Rotenberg contacted the victim at her place of employment, late at night, without notice, and discussed the charges which were pending against the defendant. In the course of the interview, he attempted to capitalize on his previous relationship with the victim and tried to persuade her to contact the district attorney and have the charges against the defendant reduced. The victim became hysterical and contacted the district attorney. The district attorney brought the matter to the attention of Judge Fullerton, and a hearing was held.

At the *in camera* hearing before Judge Fullerton, Rotenberg insisted that he had the right to represent the defendant and that he was the counsel that the defendant had chosen. Judge Fullerton, after a hearing, advised Rotenberg that if he continued to represent the defendant, a grievance would be filed with the grievance committee of this court. Rotenberg then withdrew from the case over the defendant's objection and assertion that he had the right to counsel of his own choice.

[1] During the week following Rotenberg's withdrawal, the defendant attempted

to obtain new counsel. He was handicapped, however, by his retainer agreement with Rotenberg. He had agreed to pay Rotenberg $1,500 for defending the case. At the time he withdrew, Rotenberg had interviewed the complaining witness and done little more. At that time, the defendant had paid him $800 or $900. However, when the defendant asked Rotenberg to return some part of the fee so that he could retain another lawyer, Rotenberg refused. Rotenberg told the defendant that he would wipe the slate clean if the defendant did not want him to represent him further, but would not make any refund. While the defendant was attempting to secure other counsel, the defendant's case was assigned to a different division for trial. With a new judge presiding, Rotenberg agreed to again enter his appearance and defend the case if the defendant would pay Rotenberg $1,500. The economic pressure applied by Rotenberg influenced the defendant to agree to Rotenberg's demands. The economic pressure applied by Rotenberg was improper. *In re Albert*, 390 Mich. 234, 212 N.W.2d 17 (1973).

[2] When the district attorney learned of Rotenberg's decision to defend the case, the conflict of interest was brought to the attention of a second district judge, and a second *in camera* hearing was held. Rotenberg asserted at that hearing that he would not go into the sexual background of the victim and again asserted that the defendant wanted him to be his lawyer. The district judge concluded that she could not deny the defendant's request to have Rotenberg represent him and did not require Rotenberg to withdraw.[1]

At the time of trial, a third judge was assigned to hear the case. He was not apprised of Rotenberg's conflict of interest and did not become aware of the full extent of the conflict until after a motion for post-conviction relief was filed by a different lawyer. Rotenberg cross-examined the victim and asked some questions which might not have been asked if his relationship with the witness was not buttressed by a background of sexual intimacy. However, Rotenberg did not attempt to explore the sexual history of the victim. *See* 18–3–407, C.R.S.1973 (1976 Supp.); *People v. McKenna*, Colo., 585 P.2d 275 (1978).

[3, 4] When the post-conviction proceedings were held, the trial judge heard extended testimony and concluded that the conduct of defense counsel not only reflected an appearance of impropriety, but also constituted a deprivation of the effective assistance of counsel. *See Tollett v. Henderson*, 411 U.S. 258, 93 S.Ct. 1602, 36 L.Ed.2d 235 (1973); *McMann v. Richardson*, 397 U.S. 759, 90 S.Ct. 1441, 25 L.Ed.2d 763 (1970); *People v. O'Neill*, 185 Colo. 202, 523 P.2d 123 (1974); *People v. White*, 182 Colo. 417, 514 P.2d 69 (1973); *People v. Gonzales*, 37 Colo.App. 8, 543 P.2d 72 (1975); *United States v. DeCoster*, 159 U.S.App.D.C. 326, 487 F.2d 1197 (1973); Tague, *The Attempt to Improve Criminal Defense Representation*, 15 Am.Crim.L. 109 (1977). A court must determine, when faced with a claim of ineffective assistance of counsel, "whether the advice was within the range of competence demanded of attorneys in criminal cases," *McMann v. Richardson, supra*, 397 U.S. at 771, 90 S.Ct. at 1449, and whether the assistance rendered by the attorney demonstrates "faithful representation of the interest of his client," *Tollett v. Henderson, supra*, 411 U.S. at 268, 93 S.Ct. at 1608. *See also People v. White, supra*. Guidelines are not lacking. *See United States v. DeCoster, supra*, 159 U.S.App.D.C. at 332–333,

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[1] The district judge was in error. "'[A]lthough the right to counsel is absolute, there is no right to a particular counsel.'" *Kramer v. Scientific Control Corp.*, 534 F.2d 1085 (3d Cir. 1976). *See also Faretta v. California*, 422 U.S. 806, 819–20 and n. 15, 95 S.Ct. 2525, 45 L.Ed.2d 562 (1976); *United States v. Dolan*, 570 F.2d 1177 (3d Cir. 1978); Geer, *Conflict of Interests*, 62 Minn.L.Rev. 119, 158–59 (1977). This is especially true when a defendant's insistence on representation by a particular lawyer may, as here, cause ethical conflicts which are so hampering that the effectiveness of counsel's assistance is necessarily called into question.

487 F.2d at 1203–1204. Our examination of the entire record indicates that there was a denial of effective assistance of counsel. The conflict of interest arising out of Rotenberg's previous sexual liaison with the victim is apparent. *Compare Holloway v. Arkansas,* 435 U.S. 475, 98 S.Ct. 1173, 55 L.Ed.2d 426 (1978). *See also* Stark, *Right to Counsel,* 16 Am.Crim.L. 51 (1978); Finer, *Ineffective Assistance of Counsel,* 58 Cornell L.Rev. 1077, 1108 (1973).

The prosecution's case, in part, was directed at the defendant's forcing the victim to perform fellatio. Rotenberg's defense was consent, buttressed by a unique theory that reflects upon his competency as a trial lawyer. He called a former girl friend of the defendant and established that she had a "liberated" relationship with the defendant. Thereafter, he elicited testimony that she had been with the defendant on numerous occasions in the Datsun 240Z that he was driving on the night that he allegedly kidnapped and sexually assaulted the victim. The witness said that she had voluntarily performed fellatio on the defendant in the Datsun, but that it was very difficult, because of the location of the gear shift and the brake. The relevance of the testimony escapes us and does not reflect reasonably effective assistance of counsel.

Any jury would have been incensed by the testimony that was presented. The defendant was not provided reasonably effective assistance of counsel.

At the Crim.P. 35(b) hearing, Judge Fullerton, who first confronted Rotenberg with what we would identify as a clear conflict of interest, said that he did not believe that the defendant understood the consequences of his election to have Rotenberg represent him. The defendant testified that representation by Rotenberg also occurred because the defendant could not obtain the funds to employ other counsel. In granting the defendant's motion for post-conviction relief, the trial judge found that the defendant had not given his informed consent to a waiver of his right to the effective assistance of counsel and that the defendant had been denied that assistance. *See Johnson v. Zerbst,* 304 U.S. 458, 58 S.Ct. 1019, 82 L.Ed. 1461 (1938). The representation in this case not only failed to meet our standard which requires reasonably effective assistance of counsel, but also falls in that category of representation that has been described as being a sham and a farce. *See Melton v. People,* 157 Colo. 169, 401 P.2d 605 (1965), *cert. denied,* 382 U.S. 1014, 86 S.Ct. 624, 15 L.Ed.2d 528 (1966).

[5] The same district court judge presided over both defendant's trial and the Crim.P. 35(b) hearing. If we were to reverse the trial court that granted post-conviction relief, we would have to overrule the trial court's conclusion that there was ineffective assistance of counsel. The right to effective assistance of counsel is among those "constitutional rights so basic to a fair trial that their infraction can never be treated as harmless error." *Chapman v. California,* 386 U.S. 18, 23, 87 S.Ct. 824, 827–8, 17 L.Ed.2d 705 (1967).

We cannot say that the record does not support the trial court's conclusion and was not in accordance with the weight of the evidence. *People v. Gantner,* 173 Colo. 92, 476 P.2d 998 (1970).

Accordingly, we affirm.

PRINGLE and CARRIGAN, JJ., do not participate.

ly available for legitimizing an extraterritorial arrest, place their actions within the zone of constitutional unreasonableness under Article II, Section 7, of the Colorado Constitution.

Since both the confession and the search followed immediately upon the illegal arrest, I would uphold the district court's suppression of the defendant's confession and the objects seized in the consent search. *See, e. g., Brown v. Illinois*, 422 U.S. 590, 95 S.Ct. 2254, 45 L.Ed.2d 416 (1975); *McCall v. People*, Colo., 623 P.2d 397 (1981); *People v. Lowe*, Colo., 616 P.2d 118 (1980); *People v. Moreno*, 176 Colo. 488, 491 P.2d 575 (1971).

I am authorized to say that DUBOFSKY and LOHR, JJ., join me in this dissent.

The PEOPLE of the State of
Colorado, Complainant,

v.

Lawrence C. ROTENBERG,
Attorney-Respondent.

No. 81SA412.

Supreme Court of Colorado,
En Banc.

Oct. 19, 1981.

In original proceeding in discipline, the Supreme Court, Erickson, J., held that firing a revolver in vicinity of two men in condominium and incompetence in representing defendants in criminal cases warrant suspension for period of one year.

Ordered accordingly.

Attorney and Client ⚷58

Firing a revolver in vicinity of two men in condominium and incompetence in representing defendants in criminal cases warrant suspension for period of one year. Code of Prof.Respon., DR1–102(A)(6), DR7–101(A)(3); Rules Civ.Proc., Rule 241, subd. B.

Linda Donnelly, Disciplinary Prosecutor, Denver, for complainant.

James J. Morrato, Denver, for attorney-respondent.

ERICKSON, Justice.

The Grievance Committee concluded this disciplinary proceeding by presenting us with a stipulation of facts and recommendations for discipline of the respondent, Lawrence C. Rotenberg. The Grievance Committee has recommended that we accept the stipulation and that the respondent be suspended for one year. In approving the stipulation, the respondent has acknowledged that he will be required, if he should seek to be reinstated, to undergo a hearing to establish his fitness to practice law and to prove that he has been rehabilitated. Rule 253, C.R.C.P. Respondent has also agreed to pay the costs of this proceeding.

We approve the stipulation and the recommendation of the Grievance Committee which has been agreed to by the respondent. Respondent has specifically agreed that the stipulation and the discipline imposed will be reported to the National Disciplinary Data Bank.

Lawrence C. Rotenberg was admitted to the bar of this Court on January 28, 1975. As a result of his handling of one transaction, he received a letter of admonition on February 23, 1981, for violation of DR 6–101(A)(3) (neglect of a legal matter), DR 7–101(A)(3) (prejudice to a client), and DR 1–102(A)(4) (misrepresentation).

Three disciplinary complaints are the subject of the stipulation which is before us. The first complaint was reviewed in *People v. Blalock*, 197 Colo. 320, 592 P.2d 406 (1979). No good purpose would be served by repeating what we said in reversing Blalock's conviction because of the respondent's incompetence as defense counsel.

EXHIBIT B

The respondent also admits that he fired a revolver in the vicinity of two men in the condominium where respondent lives. He was subsequently charged with unlawful possession of a weapon and the unlawful firing of a weapon and pled guilty to the reduced charge of disturbance. He admits that his conduct violated Rule 241(B), C.R.C.P., and DR 1-102(A)(6).

The third complaint centers around his defense of Morris E. Wolf, who was found guilty of two counts of theft by receiving, section 18-4-410, C.R.S.1973. A new trial was granted to Wolf after he obtained other counsel because of respondent's incompetence. The respondent acknowledges that his failure to file a motion to suppress; to formulate and develop a theory of defense; to object to evidence of other crimes and transactions and to request an instruction regarding the limited purpose for which such evidence could be used, as well as his failure to object to hearsay which referred to his client as a "fence," violated Rule 241(B), C.R.C.P., and DR 7-101(A)(3). *See People v. Wolf,* Colo., 635 P.2d 213 (1981).

Accordingly, the Court approves the stipulation of facts and the discipline which the Grievance Committee has submitted to us. The respondent is suspended for the period of one year from the date of the announcement of this opinion, and is ordered to pay the costs incurred in the amount of $545.86 within sixty days to the Clerk of this Court. Any application for reinstatement will require the respondent to bear the burden of establishing his fitness to practice law and rehabilitation in accordance with Rule 253, C.R.C.P.

Richard E. HARGREAVES; John M. Harrison; Harlan Wagoner; John Haley; H & H Quality Enterprise Inc., a Colorado Corporation; Longmont Home Improvement, Inc., a Colorado Corporation; and Longmont Soil Conservation District, Plaintiffs-Appellants and Cross-Appellees,

v.

Phil G. SKRBINA; Phil G. Skrbina, Inc., a Colorado Corporation; the City of Longmont, a Colorado Municipal Corporation, Defendants-Appellees,

and

Kenneth A. Williamson; Connie S. Williamson, Defendants-Appellees and Cross-Appellants.

No. 79CA0244.

Colorado Court of Appeals,
Div. I.

April 16, 1981.

Rehearing Denied May 28, 1981.

Certiorari Granted Oct. 5, 1981.

Property owners appealed from a judgment of the District Court, County of Boulder, Richard W. Dana, J., denying their request for mandatory injunctive relief to compel the removal of a building for violating the city's setback ordinance. Building owners cross-appealed from the award of mandatory injunctive relief as to the drainage system and of damages to property owner's fence. The Court of Appeals, Coyte, J., held that: (1) trial court erred in weighing circumstances and determining hardship in denying mandatory injunctive relief; (2) based upon its finding that historically water flowed from northwest to southeast, trial court properly concluded that dominant estate had right to have water drained onto servient estate; and (3) trial court did not err in failing to award attorney fees.

Reversed and remanded.

Berman, J., specially concurred and filed opinion.

Supreme Court
STATE OF COLORADO
STATE JUDICIAL BUILDING
2 EAST FOURTEENTH AVENUE
DENVER, COLORADO 80203
(303) 861-1317

WILLIAM H. ERICKSON
JUSTICE

April 13, 1979

Mr. David Cribari
Truitt, Cribari & Zanett
4155 E. Jewell Avenue - Suite 412
Denver, CO 80222

Dear Dave:

Enclosed herein is a Xerox copy of a letter which apparently concludes our partnership liquidation problems with Morrato, Gueck & Colantuno.

I previously told you the background behind our Hindry & Meyer settlement. Originally a check was tendered to me for $25,000 which was to be treated as a purchase of my stock in the W. H. Erickson Professional Company. That transaction would constitute a capital gains transaction. In view of my dispute with Hindry & Meyer, I refused the check because certain sums would be claimed by Hindry & Meyer as being funds that they had an interest in that had been collected by Morrato, Gueck & Colantuno.

Morrato, Gueck & Colantuno has now paid $3,993.06 to the Internal Revenue Service, which is short of the amount which we originally agreed upon. I would hope that we can still take this as a capital gain, even though they have treated it as income. In any event, we are entitled to the credit.

Very truly yours,

William H. Erickson

WHE/ltb

Encl.

EXHIBIT C

MORRATO, GUECK & COLANTUNO
PROFESSIONAL COMPANY
ATTORNEYS AT LAW
1100 CAPITOL LIFE CENTER
16TH AND GRANT
DENVER, COLORADO 80203

JAY L. GUECK
JOSEPH F. COLANTUNO
JAMES J. MORRATO
I. THOMAS BIEGING

JAMES L. HAMMER
ROGER L. KEITHLEY
JOHN E. BURRUS

IVAN D. FUGATE
OF COUNSEL
TELEPHONE 861-2100
AREA CODE 303

April 12, 1979

Mr. James A. Clark
500 Capitol Life Center
16th and Grant
Denver, Colorado 80203

Dear Jim:

Sometime ago we advised you that this office was under an income tax audit by the Internal Revenue Service for the year 1977. The revenue agent who conducted the field audit has recommended in his report of examination that there should be no changes to our corporate tax return. The agent, however, also audited our withholding tax returns, Form 941, and has written a report that we improperly handled the payment to Justice Erickson in the amount of $18,000. The agent concluded that the money was compensation for his services as a member of this office, and has advised us that we owe additional taxes in the amount of $3,993.06.

Last Thursday I executed a consent form, Form 2504, a copy of which is enclosed, so that within the next 60 days we expect to receive an invoice from the IRS for the amount of money due. You will note from the consent form that we have reserved the right to challenge the findings of the examining agent and to claim that we had no responsibility to pay withholding taxes on account of moneys distributed to Justice Erickson.

A while ago I understood that the only open matter between us and Justice Erickson was a contingent liability on account of the dispute between Justice Erickson and the Hindry & Meyer firm. We had agreed not to plead the statute of limitations if liability was visited upon Justice Erickson on account of certain fees ultimately paid to us for cases that originated at the firm of Hindry, Erickson & Meyer. We now understand that that matter has been settled and that a positive cash amount was paid to Justice Erickson and that matter is now closed. The settlement with Hindry & Meyer should have concluded the matter between ourselves and Justice Erickson. Apparently Justice Erickson, for some reason, thinks otherwise. Jim, we need to have the matter disposed of once and for all. Things keep changing here, and others besides the three of us now have a right against the income of the firm.

Mr. James A. Clark -2- April 12, 1979

It seems to me that after we pay the tax bill three things can happen: 1) we can forget it; or 2) we can sue for a refund on the basis that Justice Erickson is not our employee; or (3) Justice Erickson can claim a credit from the IRS against his taxes and receive a refund of approximately $3,000.

We herewith agree that when we make the payment to the IRS we will forego any claim to a refund and permit Justice Erickson to have the full benefit of that payment if his acceptance of this sum will mean the matter is final.

We have had a short conference among ourselves on the matter, and everyone here would appreciate it if you would relay our position on to Justice Erickson.

Hope you have a good Easter and enjoy your vacation.

Sincerely,

Joseph F. Colantuno

Joseph F. Colantuno

Enclosure

JFC:mlb

U

Form 2504
(Rev. May 1977)

Department of the Treasury — Internal Revenue Service

AGREEMENT TO ASSESSMENT AND COLLECTION OF ADDITIONAL TAX AND ACCEPTANCE OF OVERASSESSMENT

Excise or Employment Tax

Date received by Internal Revenue Service

I consent to the immediate assessment and collection of any additional tax and penalties and accept any overassessment (decrease in tax and penalties) shown below, plus any interest provided by law.

Additional Tax and Penalties

Tax Period Ended	Return Form Number	Kind of Tax and Internal Revenue Code Section	Amount of Tax	Penalty
12/31/77	940	FUTA, Sec. 3301	142.80	-0-
3/31/77	941	FICA & Income W/H Sec. 3101, 3111, & 3402	3,850.26	48.26
		Total	3,993.06	48.26

Decrease in Tax and Penalties

Tax Period Ended	Return Form Number	Kind of Tax and Internal Revenue Code Section	Amount of Tax	Penalty
		Total		

Name and Address of Taxpayer(s) *(Number, street, city or town, State, ZIP Code)*

Morrato, Gueck & Colantuno, P.C.
1100 Capitol Life Center
Denver, Colorado 80203

(The Internal Revenue Service does not require a seal on this form, but if one is used, please place it here.)

Signatures

		Date
		Date
By Joseph F. Colantuno	Title	Date 4/5/79

Note: If you consent to the assessment of the amounts shown in this agreement, your signature will expedite our adjustment to your account. Your consent will not prevent you from filing a claim for refund (after you have paid the tax) if you later believe you are so entitled; nor prevent us from later determining, if necessary, that you owe additional tax; nor extend the time provided by law for either action.

Who Must Sign

If you are making this agreement for a partnership, all partners must sign, unless one partner, with appropriate evidence of the authority to do so, signs for the partnership.

If you are making this agreement for a corporation, it must be signed with the corporate name, followed by the signatures and titles of the corporate officers authorized to sign.

An attorney or agent may sign this agreement provided such action is specifically authorized by a power of attorney which, if not previously filed, must accompany this form.

PAUL SIMON
ILLINOIS

COMMITTEES
LABOR AND HUMAN RESOURCES
JUDICIARY
FOREIGN RELATIONS
BUDGET

United States Senate
WASHINGTON, DC 20510

May 20, 1988

The Honorable William H. Erickson
Colorado Supreme Court
Room 465
2 East 14th Avenue
Denver, Colorado 80203

Dear Justice Erickson:

Since the hearing, I have had a chance to check with someone whose judgment I trust in the Denver area, and I was advised by him that the Cherry Hills Country Club is "notorious" for not accepting Jews or members of minority groups. My staff has confirmed this with other sources.

On the basis of what I have learned, I believe it would be advisable for you to resign, rather than leave doubt on this question.

Sincerely,

Paul Simon
United States Senator

PS/ead

COPY

230 S. Dearborn
Kluczynski Bldg., 38th Floor
Chicago, IL 60604
312/353-4952

3 West Old Capitol Plaza
Suite 1
Springfield, IL 62701
217/492-4960

8787 State St.
Suite 212
East St. Louis, IL 62203
618/398-7707

250 West Cherry
Room 115-B
Carbondale, IL 62901
618/457-3853

Supreme Court
STATE OF COLORADO
STATE JUDICIAL BUILDING
2 EAST FOURTEENTH AVENUE
DENVER, COLORADO 80203
(303) 837 3747

1988 JUL -7 PM 1:21

WILLIAM H. ERICKSON
JUSTICE

July 5, 1988

The Honorable Paul Simon
United States Senator
United States Senate Committee on the Judiciary
Washington, D.C. 20510-6275

Dear Senator Simon:

I have delayed my response to your letter of May 20, 1988, in order to make further inquiries about Cherry Hills Country Club. Initially, I should point out that the Colorado Code of Judicial Conduct does not include the American Bar Association commentary to Canon 2A which is the epicenter of your inquiry, and our Colorado federal courts have not adopted the commentary.

As you know from my answers to your questions, I am a member, but have never been involved in the management or in the membership policies of Cherry Hills. My wife, children, and grandchildren enjoy using the club facilities, but I have seldom participated in club activities of any kind. I have never been to an annual meeting. I reviewed the bylaws for the first time in 1984 after the American Bar Association adopted the commentary to Canon 2A that states that it is inappropriate for a judge to belong to a club that practices invidious discrimination in its selection of members. The commentary causes a judge who is opposed to discrimination of any kind to suffer guilt by association if the membership committee of an organization denies admission to an applicant who asserts that race, gender, religion, or national origin played a part in the decision of the committee.

In my opinion, the Cherry Hills bylaws are neutral. I have provided Senator Wirth with the bylaws and a letter from the past president of the club. I also forwarded to your staff investigators a copy of my letter to Senator Wirth, with the enclosures. Charles F. Brega, who is more familiar with the club than I am, and is the former president, has agreed to answer any additional questions you may have. His telephone number is (303) 893-5800.

During the confirmation hearing, I offered to resign my membership if the judges on the United States District Court for the District of Colorado conclude that Cherry Hills County Club practices invidious discrimination, and agreed, as an alternative, that the decision could be made by the United States Committee on Codes of Conduct of the United States Judicial Conference. In my view, it is difficult for a judge to ascertain whether a particular club discriminates simply by examining the bylaws and by making isolated inquiries.

The commentary to Canon 2 is in accord with this view:

> Whether an organization practices invidious discrimination is often a complex question to which judges should be sensitive. The answer cannot be determined from a mere examination of an organization's current membership rolls but rather depends on the history of the organization's selection of members and other relevant factors.

Cherry Hills Country Club has a significant female membership. It also has Jewish members. I know of at least one member who is hispanic. There are no black members in the club, but I have been told that no black has ever applied. I do not know how many Jews or hispanics have applied to the club. The nature of private clubs -- including country clubs -- is that they tend towards exclusivity. Most people who join country clubs either play golf or tennis. Members of country clubs also have to pay considerable initiation fees and monthly or annual dues. The initiation fee at Cherry Hills is currently $30,000, which undoubtedly is prohibitive for most people. I also believe that the demographics of the Denver metropolitan area contributes to the makeup of membership at Cherry Hills. While certainly not conclusive, these factors suggest that Cherry Hills Country Club may not discriminate, notwithstanding the racial or religious complexion of its membership. Although the simplest way to determine whether a club discriminates is to examine its membership rolls, this method disregards the complexity of such matters, a fact that is acknowledged in the commentary to Canon 2.

I do not believe that the opinions you received on the membership practices of Cherry Hills are supported by facts that would prove invidious discrimination. My investigation has not disclosed that Cherry Hills has a "notorious" reputation for excluding Jews and minorities, and practices invidious discrimination. If I were to resign, I am advised that some members of the Judiciary Committee would treat my resignation as an admission that Cherry Hills Country Club is guilty of invidious discrimination in its membership practices. Other members of the Judiciary Committee, I understand, do not believe that my resignation would remove the taint allegedly created by the policies of Cherry Hills Country Club membership committee. In short, it appears that my resignation would not exonerate me of the charges that have been made against Cherry Hills. This is not an unreasonable view. If by belonging to Cherry Hills Country Club, I allegedly subscribe to discriminatory views, it stretches one's credulity to think that my leaving the club would change those views. Resigning in response to the political pressure exerted by your committee would be little more than a hollow gesture, motivated by my interest in becoming a federal judge, not in a belief that Cherry Hills practices invidious discrimination. Because I believe such conduct is inappropriate for one who aspires to the federal bench, I must decline your suggestion that I resign to enhance my chances for confirmation.

In seeking a federal judicial appointment, I had hoped that my qualifications and record would support my confirmation. The American Bar Association Federal Judiciary Committee found me to be "well qualified" with some votes favoring the rating of "exceptionally well qualified." It is inconceivable to me that my membership in Cherry Hills could in any way reflect on my impartiality or my qualifications to be a federal judge. At this juncture in my career I have established a long and varied record. Had I, in fact, held discriminatory attitudes that might compromise the integrity or impartiality of the federal bench, evidence of this should have surfaced through the more than 750 majority opinions I have authored for the Colorado Supreme Court, or through my twenty years as a trial attorney. Given my extensive record, the fact that my confirmation is jeopardized by my membership in Cherry Hills Country Club strikes me as superficial. I refuse to believe that forty years of experience as a lawyer and judge may be ignored and that I can be found unqualified to serve as a federal judge because I am a member of an organization that unidentified persons have asserted to be guilty of discriminatory membership practices.

Assuming for sake of argument that Cherry Hills Country Club does discriminate, simply resigning serves no constructive purpose. Forcing prospective federal judges, who are probably best equipped to effect changes in membership policies, to resign seems to defeat the goal of thwarting discrimination. The more positive and useful course, in my view, is for judges and attorneys to forcefully work towards ensuring that discrimination plays no part in a club's admission policy. With that in mind, regardless of the outcome of my confirmation hearing, I intend to do what I can as a member of Cherry Hills to ensure that considerations of race, religion, and national origin do not enter into the admissions process in the future.

If you and your committee do not feel that I am qualified for this appointment, I respectfully urge you to act as promptly as possible in confirming the other nominees to fill the long-standing vacancies on the federal district court for Colorado in order that the citizens of this state may be properly served.

Sincerely yours,

William H. Erickson

WHE:ps

cc: Hon. Strom Thurmond
Hon. William L. Armstrong
Hon. Timothy E. Wirth

CHERRY HILLS COUNTRY CLUB
COMPLETE BYLAWS
UPDATED TO OCTOBER 1, 1987

1. **ORGANIZATION AND PURPOSE.** To maintain an incorporated non-profit social and recreational membership club, operated exclusively in the Cherry Hills tradition for the pleasure, recreation and enjoyment of its members, no part of the net earnings of which inure to the benefit of any member.

2. **GOALS AND OBJECTIVES.**

(a) To seek and retain a membership of outstanding quality. Membership will be limited to numbers appropriate to the facilities, camaraderie and social activity.

(b) To develop and maintain outstanding physical facilities, with primary attention directed to the care and improvement of a premier golf course with excellent clubhouse, tennis and swimming facilities.

(c) To operate the club using sound business principles, retaining an experienced management and staff.

(d) To operate on a sound fiscal basis utilizing an appropriate financial reporting system.

(e) To select dedicated and competent members for service on the Board of Directors and strive for continuity of Club policies in direction and management of the Club.

(f) To continue to foster the Club's national reputation by hosting major golf championships.

ARTICLE II
Form of Government

The determination of policy for and the ultimate control of the Club, its affairs, property and funds shall be entrusted to a Board of Directors (Article III) elected by the Members as provided in Article VIII. The various Standing and Special Committees (Article IV) shall assist the Board of Directors in the formulation of the Board's policies and directions in particular areas. The Board of Directors shall elect Officers, and the General Manager and his Staff are responsible for implementing the policies and directions established by the Board of Directors. The General Manager shall directly supervise and be responsible for all aspects of each of the Club's several operations including, without limitation, the Clubhouse, all food and beverage services, entertainment, grounds maintenance, golf, swimming and tennis activities, and the administrative and financial offices. The General Manager shall be responsible for the employment and termination of all personnel employed or engaged by the Club (other than the Golf Professional and his staff, the Golf Professional being party to a separate contract with the Board of Directors): provided, however, that in the hiring and termination of the Swim Professional, Tennis Professional, Grounds Superintendent and Office Manager, the consent of the Board of Directors shall be obtained and nothing herein shall impair the effectiveness of any existing contract with any such individual. The Office Manager of the Club shall report to the General Manager and to the Board of Directors.

ARTICLE III
Board of Directors

Section 1—Number and Classes. The Board of Directors shall be fifteen (15) in number and shall be divided into three (3) classes of five (5) members each. The term of office of one class shall expire at each Annual Meeting (Article VII), when five (5) Directors shall be elected by ballot to serve for three (3) years (except as provided in Article V, Section 3). Any vacancy in the Board shall be filled by the remaining Directors by election of a Member to serve until the next Annual Meeting, at which time the Members shall elect one of their number to serve for the balance of the unexpired term. No person shall be qualified to be elected a director who has also been a director within the three preceding fiscal years of the Club.

Section 2—Powers. In addition to, and not in restriction or limitation (except as provided in Section 3) of the usual powers of like bodies, the Board of Directors shall have the following powers:

(a) To detemine policy for, and to exercise control of the Club, its affairs, property and funds.

(b) To admit applicants for membership, and to fine, suspend, or expel Members by ballot for non-payment of dues, assessments, or other obligations to the Club, or for conduct incompatible with the interests of the Club.

(c) To make and enforce Rules for the conduct of Members of the Club and for the use of Club property.

(d) To fix and enforce penalties for the violation of the Bylaws and Rules.

(e) To remit penalties for offenses against the Bylaws and Rules.

(f) To prescribe and publish Rules not inconsistent with these Bylaws, for the admission of guests and visitors to the Club.

(g) To call Special Meetings of the Members of the Club to consider specific subjects.

(h) To make, alter and amend Rules for the government of the Board and to fix and enforce penalties for the violation of such Rules.

(i) To elect Officers (Article V) and, by a two-thirds vote of the entire Board, to remove any Officer of the Club; to fill any vacancies among the Officers and Directors by a vote of the majority of those present at a regular or Special Meeting of the Board called for that purpose. The person so elected shall hold office until the next Annual Meeting of the Club, or until his successor is elected.

(j) To approve the appointment of the Committees (Article IV) and to delegate to the said Committees such of the powers of the Board as the Board shall see fit.

(k) To select and engage the services of a General Manager and to monitor the operations of such General Manager, including compliance with policy, rules and budgetary controls; to determine the services of such General Manager if deemed in the best interests of the Club.

(l) To repeal, alter and amend, these Bylaws by a two-thirds vote of the Board provided, however, that the language of such proposed repeal, alteration or amendment shall first have been mailed to all voting Members and there shall not have been received by the Secretary of the Club within thirty (30) days after such mailed notice, written protests from not less than twenty percent (20%) of such voting members. In the event the Secretary has received the requisite number of written protests from Members, the procedures specified in Article VIII, Section 4 and the articles of incorporation shall be invoked and the action of the Directors shall thereafter, with respect to such proposed repeal, alteration or amendment of the Bylaws, be consistent with the outcome of such procedures.

(m) To construe the Rules and bylaws of the Club, which construction shall be final.

(n) To annually adopt on or before the regular Board meeting in October an operating budget and a capital improvement budget.

(o) To do all other things deemed by the Board necessary and expedient to control and manage the property and affairs of the Club not inconsistent with the Charter and bylaws thereof.

(p) To indemnify the officers, directors, and employees of the Club as provided in Section 6.

Section 3—Limitations. Notwithstanding anything provided in Section 2 above, the power to take the following actions shall be exercised only by a majority vote of the Members eligible to vote at a regular or special meeting of the Club called for such purpose and in accordance with these Bylaws:

(1) To mortgage the property of the Club in any amount;

(2) To purchase, sell or exchange real estate having a price of $400,000 or more on behalf of the Club;

(3) To alter the categories of Club membership or change the number of members permitted in any particular category of membership; and

(4) To hold more than one major, national professional golf tournament at the Club during any ten-year period.

Section 4—Regular and Special Board Meetings. The Board shall hold Regular Meetings at least once each month on a day to be set at the first meeting following the Annual Meeting. Special Board Meetings may be called by the President and must be called upon the written request of three (3) members of the Board, provided that notice thereof and the business to be presented shall be given to each Board member before the time appointed for such meeting. A majority of the Board shall constitute a quorum.

The order of business at all Regular Meetings of the Board shall be as follows:

(1) Reading of Minutes.

(2) Treasurer's Report.

(3) Reports of Standing Committees.

(4) Reports of Special Committees.

(5) Election of Members.

(6) New Business.

Section 5—Annual Report. The Board of Directors, under the direction of the president, shall prepare an Annual Report, including a discussion of the condition of the Club and its property and an audited financial statement for the past year which report and statement shall be mailed to each Member of the Club prior to the Annual Meeting.

Section 6—Indemnification of Officers and Directors. The Board of Directors of the Club shall have the power to:

(a) Indemnify any person who was or is a party or is threatening to be made a party to any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative (other than an action by or in the right of the Club) by reason of the fact that he is or was a director, officer, or employee of the Club, against expenses (including attorney fees), judgments, fines, and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit, or proceeding, if he acted in good faith and in a manner he reasonably believed to be in the best interests of the Club and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, or conviction or upon a plea nolo contendere or its equivalent shall not of itself create a presumption that the person did not act in good faith and in a manner which he reasonably believed to be in the best interests of the Club and with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was not unlawful.

(b) Indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending, or completed action or suit by or in the right of the Club to procure a judgment in its favor by reason of that fact that he is or was a director, officer, or employee of the Club, against expenses (including attorney fees) actually and reasonably incurred by him in connection with the defense or settlement of such action or suit if he acted in good faith and in a manner he reasonably believed to be in the best interests of the Club, but no indemnification shall be made in respect to any claim, issue, or matter as to which such person has been adjudged to be liable for negligence or misconduct in the performance of his duty to the Club.

(c) Indemnify a director, officer, or employee of the Club to the extent that such person has been successful on the merits in defense of any action, suit, or proceeding referred to in Subsection (a) or (b) in this Section 6 or in defense of any claim, issue, or matter therein, against expenses (including attorney fees) actually and reasonably incurred by him in connection therewith.

(d) Authorize indemnification under Subsection (a) or (b) of this Section 6 (unless ordered by a court) in a specific case upon a determination that indemnification of the director, officer, or employee is proper in the circumstances because he has not met the applicable standard of conduct set forth in said Subsection (a) or (b). Such determination shall be made by the Board of Directors by a majority vote of a quorum consisting of directors who were not parties to such action, suit, or proceeding, or, if such quorum is not obtainable (or even if obtainable a quorum of disinterested directors so directs) by independent legal counsel in a written opinion.

(e) Authorize payment of expenses (including attorney fees) incurred in defending a civil or criminal action, suit, or proceeding in advance of the final disposition of such action, suit, or proceeding as authorized in Subsection (a) of this Section 6 under receipt of an undertaking by or on behalf of the director, officer, or employee to repay such amount unless it is ultimately determined that he is entitled to be indemnified by the Club as authorized in the Section 6.

(f) Purchase and maintain insurance on behalf of any person who is or was a director officer or employee of the Club, against any liability asserted against him and incurred by him in any such capacity or arising out of his status as such, whether or not the Club would have the power to indemnify him against such liability under the provisions of Section 6.

ARTICLE IV
Committees

Section 1—Standing and Special Committees. The Standing Committees of the Club shall consist of the following: Budget and Finance Committee, Executive Committee, Golf Committee Membership Committee, Planning Committee, Social Committee, Swimming Committee, Tennis Committee and Water Committee. With the exception of the Executive Committee, all Standing Committees shall be appointed annually by the President with the approval of the Board of Directors and shall consist of at least three (3) Members of the Club under the chairmanship of a Director as designated by the President. Special Committees, when authorized by the Board of Directors, may be appointed by the President, either from the Board of Directors itself or from the Members at large. No Committee, Standing or Special, shall exercise any power except as expressly delegated to it by the Board of Directors or by these Bylaws. In general the several Standing and Special Committees shall be advisory to the Board of Directors and shall assist the Board in the formulation of the Board's policies and directions in particular areas and shall not, except as herein otherwise specifically provided, exercise executive function. The President and the General Manager shall be ex officio members of such Committees and Sub-Committees.

Section 2—Budget and Finance Committee. The Budget and Finance Committee shall be composed of a Chairman appointed by the President, together with other members of the Club as may be selected by the Chairman or the Committee with the approval of the President. The Committee shall review the monthly financial statements of the Club and compare them with the operating and capital improvement budgets adopted by the Board, and, if necessary, make recommendations to the Board regarding interim revisions of the budgets as adopted.

Section 3—Executive Committee. The Executive Committee shall be composed of the current President, the immediate past President, the Vice President, the Secretary and the Treasurer of the Club. They shall formulate and recommend overall policies and any changes in the Bylaws to the Board of Directors regarding the business affairs of the Club, its operations, and current problems, if any. The Committee shall review the proposed budgets submitted by the General Manager and make such revisions therein as it deems necessary before recommending formal adoption thereof to the Board of Directors. The Committee shall handle such emergency or other matters as are delegated to the Committee by the Board of Directors for final action. Subject to later ratification by the full Board of Directors, the Executive Committee may act for the Board in emergency matters where it is not practical or feasible to convene a meeting of the full Board.

Section 4—Golf Committee.

(a) The Golf Committee, in conjunction with the General Manager and Golf Professional and subject to the approval of the Board of Directors, shall have charge of arrangements for, and conduct of, all golf tournaments held by or at the Club except the Hillsdilly and State and/or National tournaments, and shall decide all questions which may arise concerning the rules of golf. This Committee shall keep all the records of tournaments held and have the care of the golf trophies in course of completion. Subject to the approval of the Board of Directors this Committee shall adopt the ground rules and guest rules regarding the use of the course for play and shall have charge of and make necessary rules and regulations regarding the duties of the Caddy Master and the caddies, so far as they pertain to the game of golf. The Committee, with the assistance of the General Manager, shall employ necessary personnel not employed by the Golf Professional upon such terms as may be approved by the Board of Directors. The Chairman of the Grounds Committee will be an ex officio member of the Golf Committee.

(b) Golf Shop Review Committee. There shall be a Golf Shop Review Committee composed of the Chairman of the Golf Committee, the two preceding years' Chairman of the Golf Committee, the Chairman of the Budget and Finance Committee, and up to two (2) other members of the Club selected by the President. These two additional members shall be appointed to serve a two-year term, with the term of each of these members expiring on alternate years, so that in the first appointment of these two members one shall be appointed for one year and the other for two years. The Golf Committee Chairman shall serve as Chairman of this Committee. In selecting Members of this Committee the President shall give special weight to the value of maintaining a high degree of continuity on the Committee and, therefore, members may serve successive terms.

The purpose of the Committee is to review and monitor, on behalf of the Board of Directors, the financial results and the operating procedures of the Golf Shop operation and to formulate recommendations pertaining thereto for submission to the Golf and Grounds Committee and to the Board of Directors. It shall, subject to the approval of the Board of Directors, employ the Golf Professional and negotiate the terms of any contractual arrangements pertaining to his duties and responsibilities and it shall be responsible for and supervise the performance of such duties and responsibilities. The Committee shall have overall supervision of the Golf Shop.

Section 5—Grounds Committee. The Grounds Committee, in conjunction with the General Manager and subject to the approval of the Board of Directors, shall have charge of the golf courses and grounds of the Club and shall be responsible for their maintenance and upkeep. Any recommended material change in the golf courses shall require the consent of the Board of Directors by a two-thirds vote. The Committee shall recommend approval or nonapproval to the Board of Directors with respect to the hiring or termination of a Grounds Superintendent by the General Manager and shall, on behalf of the Board of Directors, periodically review the performance of the Grounds Superintendent's duties. The Committee shall similarly make policy recommendations concerning when and where the electric carts may be used on the golf course so as not to cause unnecessary damage to the course or grounds. The Chairman of the Golf Committee will be an ex officio member of the Grounds Committee.

Section 6—House and Construction Committee. The House and Construction Committee shall be advisory to the Board of Directors and to the General Manager in matters pertaining to control, operation and supervision of the Clubhouse, its contents and the employees engaged therein (other than the Golf Shop and its employees) and in matters affecting construction and maintenance of Clubhouse facilities. It shall serve as a liaison between the full Board of Directors and the General Manager in developing policy and procedures for the operation of the restaurant and bar facilities, in the determination of food and beverage prices, and in making rules and regulations pertaining to the use of the Clubhouse facilities and the conduct of the Members and their Guests while using the same.

Section 7—Insurance Committee. The Insurance Committee shall consist of not less than five members of which three (3) shall be qualified insurance technicians. The Committee shall report to the Board of Directors at least annually concerning the various insurance coverages as carried or needed by the Club, its Officers, Directors, and Management for their protection. They shall make recommendations from time to time to the Board relative to any changes to be made in the club's insurance coverage as well as in regard to any safety program to lessen casualty or fire risks to Club properties and reduce hazards to members, employees, and agents of the Club.

Section 8—Membership Committee. The Membership Committee shall receive from the Secretary all applications for membership, see that they are made in compliance with these Bylaws, and report its recommendations as to the admission of applicants to the Board of Directors. Any Member serving on the Membership Committee cannot sponsor or second an application for Membership during his term of office on such committees.

Section 9—Planning Committee. The Planning Committee shall be responsible for making recommendations to the Board of Directors regarding short and long range planning aspects of the facilities, financing, Club structure and organization, membership policies, and Club administration. The Committee shall consist of nine members whose appointments shall be for a three year term, with the terms of three members expiring each year, so that in the first appointment, three members shall be appointed for one year, three members for two years, and three members for three years.

Section 10—Social Committee. The Social Committee shall be advisory to the Board of Directors and to the General Manager in matters pertaining to all general Club entertainments, including card games, entertainment features of the annual dinner, and all other special dinners, dances or entertainments given by the Club, except those related to the Hillsdilly

Section 11—Swimming Committee. The Swimming Committee shall be advisory to the Board of Directors and to the General Manager in matters pertaining to the overall operations of the swimming pool and the making of Rules and Regulations governing the use of the pool by the Members and their Guests. The Committee shall recommend approval or non-approval to the Board of Directors with respect to the hiring or termination of a Pool Director by the General Manager, and shall periodically review for the Board of Director the performance of the Pool Director's duties. The Committee shall, in conjunction with the General Manager and the Pool Director, and subject to the approval of the Board of Directors, hold and sponsor such tournaments during the season as it determines shall be in the best interests of the Club and its Members.

Section 12—Tennis Committee. The Tennis Committee shall be advisory to the Board of Directors and to the General Manager in matters pertaining to the overall operation of the Tennis Courts and the making of Rules and Regulations governing the use of the Tennis Courts by the Members and their Guests. The Committee shall recommend approval or non-approval to the Board of Directors with respect to the hiring or termination of a Tennis Professional by the General Manager, and shall periodically review for the Board of Directors the performance of the Tennis Professional's duties. The Committee shall, in conjunction with the General Manager and the Tennis Professional, and subject to the approval of the Board of Directors, hold and sponsor such tournaments during the season as it determines shall be in the best interests of the Club and its Members.

Section 13—Water Committee. The Water Committee shall be advisory to the Board of Directors and the General Manager and shall (1) supervise, on behalf of the Board of Directors, the use of the Club's water resources to insure the most economical, efficient, and beneficial use of the Club's present water rights, (2) in coordination with the Golf Committee, Grounds Committee, and the General Manager, and the Club's Grounds Superintendent, maintain the Club's water facilities, and make all ordinary repairs and improvements; and (3) study the future water requirements of the Club and recommend appropriate action to the Board of Directors to fulfill these requirements.

Section 14—Coordination of Committee Activities. It is recognized that there are overlapping areas of interest in the scope of the duties and responsibilities of the several committees. Each Committee Chairman is charged with the additional responsibility of coordinating the activities of his Committee, with the assistance of the General Manager, with the activities of all of the other Committees, in order to obtain the best possible results for the Club with the least duplication of effort.

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ARTICLE V
Officers

Section 1—Officers. The Officers of the Club shall be a President, Vice President, Secretary and Treasurer, each of whom shall be a Member of the Board of Directors.

Section 2—Election. Except as provided in Section 3, all Officers shall be elected by the Board of Directors at the September Regular Meeting next prior to the Annual Meeting to take office at the Annual Meeting. All Officers (including the President) shall hold their respective offices until the next Annual Meeting or until their successors are duly qualified and elected.

At all such elections the Chairman shall call for nominations by secret ballot. Should a nominee receive a majority of the nominating votes, he shall be declared elected. Otherwise, voting shall continue by secret ballot until one of the nominees receives a majority of the votes. The nominees receiving the greater number of votes in the nominating procedure or in subsequent balloting and in the aggregate representing two-thirds of the votes cast, shall be the only names considered in any subsequent balloting. No absentee ballots shall be counted, and only persons present at said special meeting shall be eligible to vote.

Section 3—President-Elect. A President-Elect, who shall automatically become President at the Annual Meeting, shall be elected by the Board of Directors at the regular meeting of the Board held in September.

Section 4—President. The President shall preside at all meetings of the Club and the Board of Directors and on behalf of the Board of Directors, shall have general supervision over the affairs of the Club, its property and employees and, in that connection, shall work closely with the General Manager. He shall be an ex officio member of all Committees. By and with the approval of the Board, he shall make and execute all contracts for and on behalf of the Club. Immediately after the election of Officers, he shall appoint the Standing Committees named in these Bylaws (Article IV) and from time to time appoint such other Committees as shall be authorized by the Board of Directors.

Section 5—Vice President. In the absence of the President, the Vice President shall perform the duties of the President. Should neither be present at any Meeting, a Chairman shall be elected by those present.

Section 6—Secretary. The Secretary shall conduct all official correspondence of the Club, subject to the general supervision of the President. He shall cause notices of all meetings of the Club and the Board of Directors to be mailed to the Members thereof, as provided by these Bylaws. He shall keep, or supervise the keeping of, the record of the meetings of the Club and the Board of Directors, shall maintain a list of the Members, shall receive applications for membership, and shall perform such other duties as may from time to time be fixed by the Board of Directors or be required by these Bylaws, the Club, and the laws of the State of Colorado.

Section 7—Treasurer. The Treasurer shall supervise the collection and disbursement of funds of the Club as directed by the Board of Directors. He shall receive and be responsible for all monies, pay bills as properly approved by the appropriate Officers and Committees, and preserve vouchers for all payments. His books shall at all times be open to the inspection of the Board of Directors. He shall make a statement at each monthly meeting to the Board of Directors concerning the financial condition of the Club, and his detailed report of the financial transactions of the Club for the preceding fiscal year shall be embodied in the Annual Report of the Board of Directors. His books and accounts shall be audited annually by a Certified Public Accountant. He may be required by the Board to give bond, at the expense of the Club, in such penal sum as the Board of Directors may determine for the faithful performance of his duties.

ARTICLE VI
General Manager

Section 1—Responsibilities. The General Manager shall be the Chief Operational Officer of the Club and is responsible for the proper management of all aspects of the Club's activities so as to insure maximum Membership satisfaction, both short and long term; the accumulation of funds compatible with the best interests of Members, their Guests, Club employees and future Members, the maintenance and improvement of the quality of the Club's products and services, and the security and protection of the Club's assets and facilities. The General Manager reports to the Board of Directors, is selected by such and serves at the pleasure of the Board.

Section 2—Duties. The General Manager administers and manages all Club operations, except as stated herein, and shall devote his time and abilities exclusively to the operations of the Club and its facilities, within the framework of general policy promulgated by the Board of Directors. His duties include the following:

(a) He shall provide the overall administration of the Club pursuant to the policies adopted by the Board of Directors and within the general provisions of the Bylaws, House Rules, etc.

(b) He shall be responsible for the hiring, termination, and supervision of all Club personnel (except as herein stated), shall assist in establishing personnel policies, wage, compensation, benefit programs, job descriptions and personnel procedures, and shall administer Club policies, programs and procedures.

(c) He shall coordinate the various activities of the club and shall achieve the appropriate cooperation and coordination of the various operations, departments and units of the Club.

(d) He shall communicate with Club Members, Committees, the Board of Directors, Staff Members and Community as necessary to accomplish the goals and objectives of the Club.

(e) He shall attend meetings of the Board of Directors and the various Committees with respect to which he shall be designated an ex officio member. He shall arrange for proper minutes to be maintained for all Committee Meetings.

(f) Although the General Manager may delegate his authority to the various department heads, he shall remain responsible for all operations of the Club and he may make changes within his authority as he deems necessary for the successful operation of the Club.

(g) The General Manager shall annually prepare a proposed operating budget and a proposed capital improvement budget during the month of August, which shall correspond in form to the club's monthly financial statement. The proposed budget shall be reviewed by the General Manager with the Chairman of the Club's Standing Committees and thereafter submitted to the Executive Committee of the Board for review, revision as necessary, and for recommendation for adoption by the Board of Directors.

(h) He shall establish directives, manuals, work schedules, rules and regulations for the conduct of the Club activities and shall approve directives prepared by Department Heads.

(i) He shall discharge such other duties as may be assigned to him by the Board of Directors.

Section 3—Authority. Commensurate with the responsibilities and duties as principal administrative officer, the General Manager shall have authority to manage and administer the Club and its operations in conformity with the policies established by the Board of Directors, the Club's By-laws, House Rules, etc. In general, he shall have authority for personnel and technical administration of all areas of the Club's operation except with respect to the Golf Professional. The General Manager shall employ and terminate the Pool Director, Tennis Professional, Grounds Superintendent and Office Manager, provided, however, such employment and termination shall be subject to approval of the Board of Directors.

ARTICLE VII
Membership

Section 1—Classes of Members. Members of the Club shall be divided into several classes hereinafter described in this Article.

Section 2—Honorary for Life Members. The Board of Directors may extend Honorary Membership for life to anyone who has performed a great service for our country or for the benefit of Cherry Hills County Club or who holds high public office or place of prestige in the community.

CHERRY HILLS COUNTRY CLUB

Section 3—Life Members. The classification of Life Members has been discontinued except for those Members having achieved such status prior to November 16, 1972.

Section 4—Men Resident Members. A man residing or having a regular place of business within seventy (70) air miles of the Club, and who is at least twenty-one (21) years of age, is eligible to become a Men Resident Member.

A Men Resident Member moving his residence and place of business beyond the foregoing limits may retain his Men Resident Membership status or, upon giving written notice of such removal to the Secretary, may elect to become a Non-Resident Member, with the approval of the Board of Directors.

If a member who has elected to become a Non-Resident Member requests a transfer to his former Resident Membership status, he shall be required to pay any assessments which may have been levied during the interval of time that such member was in a Non-Resident Membership status. Such a Member, when requesting a transfer to his former status as a Men Resident Member, shall be given preference on the waiting list of the Club if there are no vacancies in such Membership classification, provided that he is otherwise qualified as above stated for such Resident Membership, and provided further that he is duly transferred in accordance with Section 15 of this Article and notwithstanding any provision in these Bylaws to the contrary, any Non-Resident Member, who has previously held a Resident Member Classification, who shall become a Resident Member in accordance with these Bylaws shall be required to pay any additional initiation fee in any amount equal to the full amount of the current initiation fee for the Resident Membership to which he has been elected, less the full amount of the initiation fee for the Resident Membership at the time he transferred to Non Resident.

Section 5—Non-Resident Members. A person who neither lives nor engages in business within seventy (70) air miles of the Club may be elected a Non-Resident Member. However, if such a person owns a residence within the 70 mile limit, but is a bona fide resident of another state, he may apply for but shall not necessarily be entitled to Non-Resident status. Bona fide in this instance shall mean that such member is subject to taxation for income and inheritance purposes by a state other than Colorado. The Board of Directors may make such special rules and regulations from time to time as it deems necessary or desirable which shall be applicable to all Non-Resident Members owning a residence within 70 air miles of the Club and who are bona fide residents of another state. Any Non-Resident Member in good standing who moves to the Denver area and makes application for Men Resident Membership shall be put on the waiting list as of the date that his original Non-Resident application was complete and ready for processing. (Also see Article IX, Section 1, Paragraph 3).

Section 6—Women Resident Members. Any woman residing or having a regular place of business within seventy (70) air miles of the Club is eligible to become a Women Resident Member.

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A Women Resident Member moving her residence and place of business beyond the foregoing limits, upon written notice of such removal to the Secretary, may elect to become a Women Non-Resident Member, with the approval of the Board of Directors. If she should return to the Denver area as specified above, she must request transfer back to Resident status in accordance with the provisions of Section 15 of this article and notwithstanding any provision in these Bylaws to the contrary, any Non-Resident Member, who has previously held a Resident Membe Classification, who shall become a Resident Member in accordance with these Bylaws shall be required to pay any additional initiation fee in an amount equal to the full amount of the curren initiation fee for the Resident Membership to which she has been elected, less the full amoun of the initiation fee for the Resident Membership at the time she transferred to Non Residen

In the case of the marriage of a Woman Resident or Woman Non-Resident Member her membership shall expire automatically at the end of the month in which her marriage occurs and she shall notify the Secretary immediately of the change in her status.

Section 7—Widows and Resident and Non-Resident Members. Widows of deceased Resident and Non-Resident Members desiring to continue to use the facilities of the Club shall be required to make application to the Board of Directors for a Woman Resident or Women Non-Resident Membership, as may be appropriate. No additional fee shall be charged if such applicant is elected to membership, but she shall be required to pay dues in the class of membership to which she is elected and she shall be required to surrender forthwith any stock in The Cherry Hills Land Company or any proprietary interest in Cherry Hills Country Club belonging to her deceased husband. if said widow shall remarry at any time, her membership shall expire automatically at the end of the month in which said re-marriage occurs, and she shall be required to notify the Secretary immediately of the change in her status.

Section 8—Special Resident Members. Any young man from twenty-one (21) through thirty-four (34) years of age, inclusive, when properly proposed and seconded, may be elected to Special Resident Membership. Special Resident Membership shall be divided into three (3 classes—Class "A", twenty-one (21) through twenty-five (25) years of age, inclusive; Class "B" twenty-six (26) through thirty (30) years of age, inclusive; and Class "C", thirty-one (31) through thirty-four (34) years of age, inclusive. An applicant cannot apply for Special Resident Membership after he reaches his thirty-third birthday.

When a Special Resident "A" Member reaches the age of twenty-six (26), and when a Specia "B" Member reaches the age of thirty-one (31), they respectively shall apply within thirty (30) days for advancement to any other class of Membership to which they are eligible or, after notice from the Club, be dropped automatically from membership. Upon receipt of a proper application, the Board of Directors shall vote upon such application in the same manner as an original for membership. If such voting results in the transfer of a Special Resident Member to any other class of Membership to which he is eligible, he shall pay the additional initiation fee and increase in dues as provided in Sections 1 and 2 of Article IX of the Bylaws.

A Special Resident Member moving his resident or place of business beyond seventy (70) air miles from the Club may, upon giving written notice of such removal to the Secretary, elect to become a Non-Resident Member with the approval of the Board of Directors.

If such Special Resident Member shall thereafter move his residence or engage in business within the foregoing limits, he shall immediately notify the Secretary requesting transfer to the class of Resident Membership to which he would then belong, and if such transfer is approved by the Board of Directors, pay any difference in iniatiation fees and dues attached to such class as prescribed in these Bylaws.

Section 9—Clergy Members. The classification of clergy membership has been discontinued except for those members having achieved such status prior to March 1, 1987

Section 10—Senior and Non-Participating Members.

(a) Senior Member. Any Man Resident Member who, prior to January 1, 1988 has attained the age of sixty-eight (68) and who has been and remains a member in good standing with the Club for a continuous period of twenty (20) years shall, with the approval of the Board of Directors, become eligible to become a Man Senior Member. From and after the date of January 1, 1988, this membership classification shall be discontinued except only for those members having achieved such status or those members who have become eligible to achieve such status prior to January 1, 1988. The dues for Men Senior Members shall continue to be one-half of the Man Resident Member rate for so long as the senior membership category continues to exist. Once having elected to become a senior member, a senior member may not thereafter elect to return once again to Man Resident Membership status. If, although eligible to request transfer to senior membership, a member elects to remain a Man Resident Member, he may thereafter at anytime, so long as the senior membership category continues to exist, and subject to the approval of the Board of Directors, elect to become a senior member.

Any senior member who shall move his residence or place of business beyond seventy (70) air miles from the Club may, upon giving written notice of such removal to the secretary, elect to become a non-resident member with the approval of the Board of Directors. If such senior member shall thereafter move his residence back to, or again engage in business, within the foregoing limits, he shall immediately notify the secretary and request transfer to Senior Resident classification in accordance with the provision of Section XV of this Article, and he shall thereafter pay the appropriate amount of dues payable by Senior Resident Members.

(b) Men-Non-Participating. Any Man Member, who has attained the age of sixty-eight (68) years and who has been and remains a member in good standing with the club for a continuous period of fifteen (15) years shall become eligible to become a Man Non-Participating member. Men non-participating members shall be entitled to all of the rights and privileges which are accorded by the by-laws to Men Resident Members. except such members shall have no right to vote and shall have no right to use the golf facilities of the club.

(c) Women-Non-Participating. Any Woman Member who has attained the age of sixty-eight (68) years and who has been and remains a member in good standing with the Club for a continuous period of fifteen (15) years shall become eligible to become a Woman Non-Participating Member with the approval of the Board of Directors. In computing the fifteen (15) year period. a Woman Resident Member who is a widow of a deceased Man Resident Member may include the years her deceased husband was a member in good standing with the Club. Such membership shall be entitled to all of the rights and privileges which are accorded by the by-laws to Woman Resident Members. except that such membership shall have no right to use the golf facilities of the Club.

(d) Notice of Election to Change. At such time as he or she becomes eligible to become a Non-Participating Member. or a Senior Member so long as the category continues to exist. any Man Resident member. Senior Member or any Woman Resident Member having the qualifications for a particular category stated above. may notify the secretary of the Club that he or she desires to become such a member. The notification of the desire to become a Non-Participating Member. or Senior Member so long as the category continues to exist. must be by written petition and. in the case of the Non-Participating category. such petition shall contain a written waiver of any rights to use the golf facilities of the Club after attaining such membership status.

When a member elects to become a Non-Participating Member. no further change of membership classification for such member shall be permitted without approval of the Board of Directors. which approval shall be granted only upon a showing of undue hardship or of exceptional circumstances.

Section 11—Limitation of Membership. The various classes of membership in the Club shall be limited to the following numbers of each class:

CLASS	**LIMIT**
Honorary For Life Members	No Limit
Men Resident Members	600 (which includes the Senior Members within the limits specified below until elimination of the senior category)

CHERRY HILLS COUNTRY CLUB

CLASS	LIMIT
Non-Resident Members	150
Women Resident Members	50 (exclusive of widows of members)
Men's and Women's Non-Participating	No Limit
Senior Men Members	100 (included within the above limit for Men Resident Members and until elimination of the senior category)
Special Resident Members	50
Clergy Members	Discontinued except for members as of March 1, 1987
Life Members	Discontinued except for members as of March 1, 1987

All classes of membership shall remain within the limits as prescribed above, provided, however, that in the event any Special Resident Member or Members shall become eligible to transfer to Men Resident Membership and admission to that category would cause the number of Men Resident Members to exceed the limit prescribed above, the limit may be temporarily increased by the number of eligible Special Resident Members requesting transfer to Man Resident status and shall not prevent the transfer of the eligible class C member or members to Man Resident Member status. So long as the total Men Residents exceeds six hundred (600) by virtue of transfer of Special Resident members, no further Men Resident Members shall be admitted.

The total number of members included within the limit prescribed for Men Resident Members shall include the number of members in the Senior Men category. Vacancies occurring within the limits prescribed for Senior Men Members shall first be filled by those eligible to apply for senior membership pursuant to Section 10(a) of these by-laws, or if there are not applications for such status, or no one eligible to fill such vacancy, the vacancy may be filled by admission to the status of Man Resident Member.

The category of Men Resident Members (including for this purpose Special Resident Members) shall be further limited to not more than fifteen (15) persons in the active employment of one company. The category of Women Resident Members shall be further limited to not more than five (5) persons in the active employment of any one company.

Section 12—Proposals for Membership. Any Member who is qualified to vote may propose or endorse a candidate for membership in the Club, provided, however, that no such member serving upon the Board of Directors or the Membership Committee of the Club shall be eligible to sponsor or second any such application for membership during his term of office on the said Board or said Committee. A candidate for membership may not be proposed or endorsed by any member if said member belongs to the same firm as the candidate or if said member is on the Board of Directors of the candidate's company.

Section 13—Procedure for Election of Members. All proposals for Membership shall be by written application made by the candidate for Membership and shall be signed by a Member who is qualified to vote as proposer and endorsed by letters from three (3) other members who are qualified to vote and who must be personally acquainted with the candidate. All proposals for Membership shall be delivered to the Secretary who shall submit the name of the applicant to the Membership Committee when the proposal is completed. The secretary shall also enter the name of the candidate upon the waiting list of the Club for future action by the Board of Directors. The Secretary and the Chairman of the Membership Committee shall keep such waiting lists showing the name, residence and occupation of the candidate, the name of his proposer, and the names of his endorsers. As vacancies occur, the names of those candidates who have been approved by the Membership Committee shall be submitted by the Chairman of the Membership Committee to the Board of Directors for approval for posting. The names of those candidates which are approved for posting shall be posted in a conspicious place in the Clubhouse for at least ten (10) days after which time such names shall be eligible, in the order in which they appear upon the waiting list, to be voted upon for membership by the Board of Directors, whose proceedings thereon shall be confidential and final. At least two (2) members of the Board of Directors shall be personally acquainted with every candidate. The vote shall be by secret ballot and any candidate receiving two (2) negative votes shall be rejected from membership. The initiation fee payable by the new Member shall be in the amount in effect on the date his application is approved by the Board of Directors.

Section 14—Requirements for Proposal. No proposal shall be completed within the meaning of Section 13 above unless and until the proposer and endorsers of the candidate should each send a letter of recommendation to the Secretary.

Section 15—Membership Transfer. Any transfer from one class of membership to another shall be subject to the approval of the Board of Directors in the same manner as an original proposal for membership.

Section 16—Special Privileges and Limitations of Membership.

(a) Men Resident, Men Non-Resident Members, Wives of Men Resident and Men Non-Resident Members (including Special Resident Members, Clergy Members, Honorary Life Members, Life Members and Senior Members) shall have the usual privileges of

Club membership, including the use of the golf course, subject to the Bylaws, House Rules and Ground Rules prescribed herein. An unmarried child of a member living at home, including any child who is under the age of twenty-two (22) shall also have the usual privileges of Club membership, including the use of the golf course, subject to the Bylaws, House Rules and Ground Rules prescribed herein, and subject to such regulations as may be imposed by the Board of Directors, upon recommendation of the Golf Committee and the Grounds Committee. The privileges and use of the Club by unmarried daughters of members shall automatically cease at the time of their marriage and shall not thereafter be extended without the approval of the Board of Directors.

(b) Women Resident and Women Non-Resident Members. Children of Women Resident and Women Non-Resident Members shall have the same privileges and limitations accorded children of Men Resident and Non-Resident Members (see Subsection (a) above).

Section 17—Discipline.

(a) A member may be reprimanded, suspended, or expelled from the Club for the following reasons:

1. Nonpayment of initiation fees, dues or accounts.
2. Violation of any Bylaw.
3. Violation of any of the rules adopted by the Board of Directors governing the use of Clubhouse, grounds, or other facilities of the Club.
4. For any conduct which, in the sole discretion and opinion of the Board of Directors, is prejudicial to good order, discipline, morals, reputation, or general welfare of the Club.
5. Conviction of any criminal offense, which in the sole discretion and opinion of the Board of Directors, is prejudicial to the good order, discipline, morals, reputation, or general welfare of the Club.

(b) Action to reprimand, suspend, or expel a member may be instituted by the Board of Directors, based upon the knowledge of any violation of Subsection (a) hereof, or upon the written complaint of any other member belonging to the club. However, no member shall be reprimanded, suspended, or expelled, until after a majority of the members of the Board shall have voted for such reprimand, suspension, or expulsion, following a hearing for such purpose at which the member shall be given the opportunity to appear and present a defense as to any of the matters complained against said member. The failure of said member either to appear or to present a defense, shall not, however, prevent the Board of Directors from proceeding to hear evidence and to take whatever action they shall see fit to take under the provisions of thse Bylaws.

(c) The Board of Directors may, in its sole discretion, before instituting a procedure for reprimand, suspend, or expel a member, as hereinabove set forth, request a member for his resignation, in writing. If such member refuses to voluntarily resign then the Board of Directors may proceed, in its sole discretion, against said member as herein provided for.

(d) The member complained against shall be given a ten (10) day notice in writing of the time when the Board will meet to consider the charges against him, which notice shall contain a statement of the matters constituting the charges against him. Such notice shall be construed as affording such member a reasonable time and sufficient opportunity to prepare his defense, unless said time is extended by the Board of Directors upon request of such member. The mailing and receipt of such notice shall be governed by the provisions of Section 21 of this Article, or said notice may be delivered to such member personally.

(e) The conduct of said hearing shall be informal and not subject of the ordinary rules of evidence governing judicial proceedings. The hearing shall not be open to any member of the public or the Club, except Board members and the accused member and his attorney, should he request counsel to represent him. All witnesses shall be excluded from the hearing room, except when testifying and their testimony shall not be transcribed unless otherwise ordered to be transcribed by the Board of Directors, in their sole discretion. The member proceeded against shall be notified in writing of the final action which is taken by the Board of Directors, but need not be informed of any specific grounds or reasons upon which said actions were based.

(f) A member who has been duly expelled in accordance with the above provisions of the Bylaws shall forfeit any initiation fee and all dues or assessments therefore paid to the Club, and he shall be required to surrender forthwith any stock which he may own in the Cherry Hills Land Company or any proprietary interest which he may own in Cherry Hills Country Club.

(g) The Board of Directors may, in its sole discretion, before instituting a procedure to reprimand, suspend, or expel a member, by a majority vote, place a member on probation for the violation of any matter for which he might otherwise be reprimanded, suspended, or expelled. The terms and conditions of such probation shall be as determined by the Board of Directors. The member, within ten days after being notified of such probation, and the terms and conditions thereof, may request a hearing before the Board of Directors at which the member shall be given the opportunity to appear and present a defense as to any of the matters for which said member was placed on probation. The hearing shall be conducted as set forth in Subsection (e) hereof.

If such member, after being placed on probation, refused to change or correct his conduct, then the Board of Directors may, in its sole discretion, proceed against him to be reprimanded, suspended, or expelled from the club, as provided in Subsections (a) through (f) hereof.

Section 18—Accounts and Indebtedness. On the first day of each month, or as soon thereafter as practicable, a statement of the amount of indebtedness (dues and account) shall be sent to each Member with supporting tickets to substantiate the charges. If such statement is not paid by the tenth (10th) day of the month following the rendition of the statement, the name of the Member and the amount of his or her indebtedness shall be posted in a conspicious place until at least forty (40) days have elapsed after the date upon which such statement was sent. Simultaneously with the posting, the Member's credit privileges shall be suspended and the Member duly advised by registered mail, return receipt requested, of such fact of suspension and further, unless his or her total indebtedness (dues and account) shall be paid in full within thirty (30) days after the date of such notice, that all privileges of Membership in the Club may be forfeited and that his or her membership may be terminated in pursuance of the provisions of Section 17 of this Article. Any member who is posted for non-payment of either dues or account more than twice during any six month period, or who shall incur any indebtedness while his or her credit is suspended, shall be further notified of such fact by registered mail, return receipt requested, which notice shall further state that his name shall be brought before the Board of Directors to consider his expulsion from membership pursuant to Section 17, of this Article.

Members who incur indebtedness to the Club while their credit is suspended shall ipso facto be suspended from all privileges from the Club until all indebtedness is paid in full, subject to the provisions of the preceding paragraph.

Section 19—Resignations. Resignations shall be presented in writing to the Board of Directors and shall not take effect before the end of the month in which received. Resignation of Members shall take effect only when accepted by the Board of Directors.

Section 20—Reinstatement. Members whose membership shall have been forfeited for any cause, including non-payment of dues and accounts, may, for good cause shown to the Board of Directors, be reinstated by a two-thirds (2/3) vote of the Board of Directors at any time within three (3) months after such expulsion or forfeiture upon payment by them of all indebtedness and dues in arrears and provided further that a vacancy in the membership exists in the class in which he or she was a Member.

A Member who shall have resigned in good standing may reapply for membership and such member shall be considered by the Board of Directors for election to the classification for which he applies on a priority basis. If a former member applies within one year of the effective date of his resignation, he shall pay all dues, assessments, or other fees that he would have been required to pay had he not previously resigned. If a former member reapplies for membership after one year and within three years of the effective date of his resignation, he shall pay either all dues, assessments or other fees that he would have been required to pay had he not previously resigned or one-half (1/2) of the current initiation fee for the category to which he has applied, whichever amount is greater. If a former member applies for membership over three years after the effective date of his resignation, then he shall reapply as a new applicant and shall pay the full amount of the then current initiation fee for the category to which he has applied.

All requests for reinstatement must be received by the Membership committee and approved by the Board of Directors.

Section 21—Notices to Members. It shall be the responsibility of each Member to provide the Club with a current mailing address to which notices shall be sent. In default of such requirement, any notice may be mailed to the last known address of the Member.

ARTICLE VIII
Membership Meetings, Elections and Special Votes

Section 1—Annual Meeting of the Members. The Annual Meeting of the Club shall be held on the fourth Tuesday in November of each year at 6 o'clock p.m. at the Clubhouse, or at such other convenient place as the Board of Directors may lawfully designate. Ten days written notice of the time and place of the Annual Meeting shall be given to all members eligible to vote at a Regular or Special Meeting of the Club.

Section 2—Order of Business. The order of business at the Annual Meeting shall be:

1. Roll Call.
2. Reading of Minutes.
3. Report of Board of Directors.
4. Report of Officers.
5. Report of Standing Committees.
6. Reports of Special Committees.
7. General Business.
8. Election of Directors.
9. Special Balloting.

Section 3—Method of Election of Directors.

(a) The Directors of the Club shall be elected by the casting of written ballots at an election to be held at the Clubhouse during the day of the Annual Meeting The polls shall remain open at the Clubhouse between the hours of 10 o'clock and 6 o clock p m

(b) When the time has expired within which nominations may be made as hereinafter provided. the Secretary shall cause the names of all properly nominated and eligible candidates to be printed upon one ballot, designating under appropriate headings those nominated by the Nominating Committee and those nominated by the Members. and shall mail said ballots. postage pre-paid. to all Members eligible to vote at least ten (10) days before the Annual Election. Each Member desiring to vote shall place an "X" mark on the official ballot opposite the name of the candidate for whom he desires to vote and shall sign his name thereto. Each Member who votes may personally deliver his ballot to the tellers of the election while the polls are open or may mail it in an envelope addressed to the Secretary of the Club marked "Ballot" to be opened by the tellers of the election upon the day of the election All ballots cast by mail must be in the hands of the Secretary before the close of the polls and shall be by him deposited in the ballot box before the same is opened by the tellers of the election. If it shall appear on any ballot that any Member has voted for more candidates than there are vacancies on the Board of Directors or has accumulated his vote on one or more candidates, his ballot shall be rejected by the tellers of the election

(c) Written ballots may be waived or dispensed with if there are no opposing candidates to be elected.

(d) The Board of Directors shall appoint three (3) tellers for the Annual Election who are not Members of the Board of Directors. or Officers of the Club. or candidates who shall check the qualifications of those voting. count the ballots. and report in writing the results of said election and the names of the Directors elected at such Annual Meeting. A plurality of all ballots cast shall elect. and in a case of a tie vote and all candidates cannot be elected. the tellers appointed shall determine by lot the candidate or candidates declared to be elected.

(e) At least sixty (60) days prior to the Annual Meeting, the President with the approval of the Board of Directors shall appoint a Nominating Committee consisting of two (2) Directors and three (3) other members qualified to vote. who shall recommend to the Board of Directors as many candidates for election as there are Directors to be elected plus two alternates. The candidates for election shall be approved by the Board of Directors at the meeting of the Board held in October. and the Secretary shall post on the Club bulletin board a list of the nominations so made for twenty (20) days consecutive before the election. Twenty-five (25) or more Members qualified to vote in good standing may likewise nominate an equal number of other candidates by verifying to the Secretary in writing. at least fifteen (15) days before the election. a list of their candidates. accompanied by the written acceptance of such Nominees signed by the candidates themselves, and it shall there upon be the duty of the Secretary to post on the Club bulletin board such list of nominees for at least ten (10) consecutive days before the election. No candidate shall be eligible for the office of Director unless he has been nominated and his name proposed as hereinabove provided. No candidate shall be eligible for the office of Director unless he is a Member qualified to vote in good standing and unless he has been a Member for at least five (5) years.

Section 4—Special Membership Meetings. The President may, and upon the request of the majority of the Board of Directors, or thirty (30) members qualified to vote, shall call a Special Membership Meeting by posting a written call over his own signature upon the bulletin board of the Club and by notifying the Secretary. The President shall also call such a Special Membership Meeting whenever, following the mailing of proposed Bylaw change(s) to the Members, the Secretary shall have received written signed protests to such proposed change(s) from not less than twenty percent (20%) of the voting Members within thirty (30) days after mailing and proposed Bylaw change(s).

Section 5—Method of Voting on Certain Membership Issues. Whenever a matter shall be brought before the Members at a Regular or Special Meeting for a vote as required by Article III, Section 3, the method for obtaining such votes shall be as follows: an explanation of the matter to be voted upon shall be prepared by the President and sent to all voting Members in good standing at least ten (10) days before the date of the Meeting. The procedure for casting votes and the appointment of tellers shall be prescribed hereinabove with respect to the election of Directors except that voting shall be in person at the Meeting.

Section 6—Qualifications for Voting. Only Life, Honorary for Life, Senior, and Men Resident Members in good standing shall be permitted to vote at an Annual or Special Meeting of the Membership.

Section 7—Quorum. At any Annual or Special Membership Meeting of the Club, fifty (50) Members qualified to vote shall constitute a quorum, but a smaller number may for lack of a quorum, adjourn the Meeting to a future day and hour, giving at least five (5) days' written notice of such adjourned Meeting to each Member qualified to vote.

ARTICLE IX
Initiation Fees, Dues and Other Member Charges

Section 1—Initiation Fees. Applicants for Membership shall pay initiation fees as follows:

CHERRY HILLS COUNTRY CLUB

Membership Classification	**Fee**
Clergy	None
Honorary Life	None
Men Resident	$30.000
Non-Resident	$ 4.000
Women Resident (1/2 of MR)	$15.000
Special Resident A (21-25)	$ 5.000
Special Resident B (26-30)	$10.000
Special Resident C (31-34)	$15.000
Special Resident to Men Resident	$15.000
Men Resident, Company Transfer (3/4 of MR fee)	$22.500

Upon the failure of any Member to pay his initiation fee. such Member shall. upon the request of the Board of Directors. resign and his membership in the Club shall be deemed to have terminated as of the date of the action of the Board of Directors. Upon a change in classification of a Special Resident Member. such Member. upon request. shall be entitled to pay the additional initiation fee due from him in twelve (12) equal monthly installments upon executing a Promissory Note for the balance due. payable to the Club without interest.

Notwithstanding any provision in these Bylaws to the contrary, any Non-Resident Member, who has previously held a Resident Member Classification, who shall become a Resident Member in accordance with these Bylaws shall be required to pay an additional initiation fee in an amount equal to the full amount of the current initiation fee for the Resident Membership to which he had been elected, less the full amount of the initiation fee for the Resident Membership to which he has been elected in effect at the time of his most recent transfer from a Resident Membership to a Non-Resident Membership.

Notwithstanding any provision in these Bylaws to the contrary, any Special Resident "A", "B", "C" who shall advance and become a Men Resident Member in accordance with these Bylaws, shall be required to pay only the amount of the initiation fee effective at the time of first becoming a Member, less credit for amounts previously paid on his initiation fee.

A Member shall have no right to a refund of any part of initiation fee upon the termination of the membership for any cause.

Section 2—Monthly Dues. Monthly dues for the various classes of membership are as follows effective October 1, 1987.

Membership Classification	**Dues**
Honorary Life	None
Men Resident	$200 00
Non-Resident	$ 75 00
Women Resident (1/2 of MR)	$100 00
Special Resident A	$ 60 00
Special Resident B	$ 90 00
Special Resident C	$140 00
Clergy (1/4 of MR)	$ 50 00
Men's Senior (1/2 of MR)	$100 00
Men's Non-Participating Senior (1/4 of MR)	$ 50 00
Women's Non-Participating Senior (1/4 of MR)	$ 50 00

Section 3—Remission of Dues.

(a) The Board of Directors, in its sole discretion, may remit dues in favor of any Mem upon request when a Member has been absent from the State for a period of six consecutive months and when such absence has been occasioned by the follow circumstances: Where a Member has been compelled to be out of the State matters of business, or where the serious illness of a Member required tempor residence outside of the State. No remission of dues shall be allowed for a peric less than six (6) months, and such remission shall never be for more than one-ha the dues of the Member for the period to which the remission applies. Such remit dues shall not be payable in cash but only apply to the credit on the obligation of Member for subsequent dues.

(b) Special Resident members who attend school or college as full time students outs of the Denver area shall be required to pay only one-half of the regular dues prov in Section 2 above during such time as they are in school and living away from ho provided they notify the Secretary in writing of any change in their status.

(c) Any Member, called to active duty in the armed forces of the country may have payment of his dues temporarily suspended during the time he is on such active and stationed away from the Denver area upon making written request to the Boar Directors for such suspension.

Section 4—Fee and Regulations for Transfer of Company Owned Memberships. Effec October 15, 1957 the practice of granting Memberships to corporations, partnerships or comp- ies was discontinued. However, companies or corporations which have heretofore paid initiation for a Men Resident Membership on behalf of one or more of their employees shall h the sole privilege of naming a successor ~~or~~ successors to any such employee who either c retires, or is transferred beyond the limits applicable to such membership, or whose employment is otherwise terminated by such company. A Company membership cannot be transferred to any other Membership category.

It is further provided, however, that such company shall propose a successor within ninety (90) days thereafter to fill such vacancy and tender on behalf of such successor named a transfer fee equal to three-fourths of the initiation fee then currently being charged for Men Resident Memberships, plus all federal or state taxes required to be charged or collected thereon.

All successors named or offered for Membership shall be given preference upon the waiting list of the Club, but they shall be elected to fill the company's membership only after due and proper proposals, seconds, and approval by the Membership Committee, and in strict compliance with the provisions of these Bylaws applicable to Men Resident Memberships. In the event that any successor named or proposed by a company shall fail in the qualifications necessary to be elected to such Membership, the Company shall forthwith thereafter name another candidate for election, who shall be passed upon in the same manner as above stated. If no satisfactory candidate be proposed by the company within six (6) months of any such vacancy, or if such company shall fail to tender the transfer fees above provided, then said Company Membership may, upon a majority vote of the Members of the Board of Directors of the Club, become forfeited and terminated.

The Secretary and Office Manager of the Club shall keep an accurate record of all such Company Memberships, and any questions which may arise in the future over whether a Membership belongs to a company or to an individual shall be investigated and determined by the Membership Committee, and the decision of the majority of the Members of the Board of Directors, based upon the recommendations of such Committee, shall be final and binding upon the parties in any dispute or controversy.

Section 5—Restricted Funds. The Club shall establish a restricted fund for the purpose of which is to insure that certain revenues of the Club are restricted to and available for expenditures of a capital nature.

Assets of this restricted fund shall be segregated from the other assets of the Club and may at the discretion of the Club Treasurer be invested in savings accounts, certificates of deposits or other short-term investments.

Revenues to be added to the restricted fund shall include initiation fees, capital fund assessments, proceeds from the sale or disposal of Club property, and other revenues, i.e., the 1985 PGA, specifically designated by the Club's Board of Directors. Interest from the investment of restricted fund assets shall be deposited in the operating account of the club.

Expenditures from the restricted fund shall be limited to the purchase of capital assets and the payment of principal and interest on debt incurred in the purchase of capital assets. The term "capital assets" shall include all items capitalized or recorded as additions to the property accounts of the Club, and in addition shall include other expenditures as authorized by two-thirds vote of the Board of Directors, which, although recorded by the Club as operating expenses, could otherwise have been capitalized under an alternative accounting method complying with generally accepted accounting principals. All transactions authorized by the Board of Directors and charged to the restricted fund account shall be reported to the membership as part of the annual financial statement.

Section 6—Clubhouse Use Fee. Effective December 1, 1985 a Clubhouse Use Fee of $50 00 shall be assessed each Member monthly, except for Honorary, Honorary Life, Life and Non-Resident Members who will be charged no fees.

ARTICLE X
Guests

Section 1—Resident Guests. A Resident Guest is defined by these Bylaws as a person and his or her immediate family (spouse and children) who reside within seventy air miles of the Club. Any Member may introduce a Resident Guest to use the facilities of the Club provided that the use of such facilities shall be in accordance with and limited pursuant to the Bylaws. House Rules and Ground Rules, further provided that the introducing member, or one of his or her immediate family entitled to the privileges of the Club, must accompany the guest or guests to the Club. The same guest shall not be introduced by the same member more than twice in each calendar month.

Section 2—Non-Resident Guests.

(a) A Non-Resident Guest is defined as a person and his immediate family (spouse and children) none of whom resides within seventy (70) air miles from the Club.

(b) Any Member may introduce a Non-Resident Guest to use the facilities of the club, provided that the use of such facilities shall be in accordance with and limited by compliance with the House Rules and Ground Rules as hereinafter more fully set forth.

(c) Upon the request of any member, a guest card may be issued by the Secretary, allowing a Non-Resident guest and the members of his immediate family to use all of the facilities of the Club, provided, however, that a separate guest card shall be required for any children aged eighteen or over who use the golf, tennis or swimming facilities of the Club. Further provided that the use of any facilities of the Club shall be in accordance with and limited by compliance with the House Rules and Ground Rules.

(d) A guest card shall be issued each guest introduced by a Member. The Member introducing a guest shall be responsible for the conduct of such guest and the immediate members of his family and shall be liable for any debt or obligation incurred by the guest, including green fees, tennis fees, or swimming fees, as are provided for in the Ground Rules of the Club. A guest card shall be valid for a period of four days, but the guest may not use the golf course between May 1 and September 30 on Saturdays, Sundays, days of tournaments, special events, or at such other times as may be designated by the golf professional. Guests shall pay the green fees, tennis fees, and swimming pool fees at the prevailing rates.

(e) Guests of the Club and their families must comply at all times with the rules governing the use of all the various facilities of the Club, and the Boad of Directors may revoke any guest card at any time for an intentional infraction of such rules and conduct. No guest shall be allowed to invite others as his or their guests.

(f) A "special guest card" may be issued upon the request of a Member to a Non-Resident Guest, as defined in paragraph (a) above for the use of the facilities of the Club, other than the golf, tennis and swimming facilities. The issuance of such special guest cards shall be unlimited, both as to the number and times for which they may be used.

Section 3—Registration. The names of all Guests and/or the Members introducing them shall be registered in a book kept for that purpose.

ARTICLE XI
Land Certificates

Section 1—Creation and Certain Terms Thereof. There is hereby authorized and created a class of securities of the club designated as Land Certificates, not limited in amount or number except as hereinafter specified. Land Certificates are issuable to each stockholder of the Cherry Hills Land Company (herein called "Land Company") in exchange for shares of stock of the Land Company transferred to the Club. Each Land Certificate shall have a Surrender Value, which value shall be the product of (i) the number of shares of Capital Stock of the Land Company for which such Land Certificate was exchanged and (ii) the price at which such stock was originally issued, such Surrender Value shall be noted on each Land Certificate.

Section 2—Rights and Preferences of Holders or Owners. Land Certificates shall entitle the registered owner thereof, upon the termination of his membership in the Club for any reason, to receive from the Club, in cash, a sum equal to the Surrender Value of such certificate, which shall be paid him within ninety (90) days after the effective date of such termination. The holders or owners of Land Certificate shall not, as such, be entitled to any other rights and privileges by reason of such possession of ownership, such as, but not by way of limitation, the right to receive, upon liquidation of the Club, the Surrender Value of their Land Certificates before any distribution of assets of the Club is made to any member thereof, as such.

Section 3—Transferability. Land Certificates are not transferable except upon surrender to the Club in the event of termination of the membership of the holder or owner. Each Land Certificate shall have imprinted thereon a legend to the effect that its transferability is restricted in accordance with the Bylaws of the Club.

Section 4—Call for Surrender. Land Certificates are subject to call for surrender, in whole or in part, at any time or from time to time at the option of the Club, upon fifteen (15) days' notice given to the owners thereof by registered mail, return receipt requested, at the address of such owners as indicated on the books of the Club. Such notice shall specify the Certificates being called and their respective Surrender Values, the date upon which such Certificates shall cease to be outstanding and the place where the sums representing the surrender value may be obtained. The mailing of such notice, but not the receipt thereof, or acknowledgement of the receipt thereof, shall be a prerequisite to the validity of such a call for surrender.

The sums representing the Surrender Value may be deposited with any bank or trust company with a capital and undivided surplus of $1,000,000 doing business in the City and County of Denver, State of Colorado, or may be held in trust by the Club segregated from its general funds for payment to the owners of the Land Certificates called for surrender.

When notice has been given and the deposit of funds has been made as aforesaid, then notwithstanding that any Land Certificate has not been presented for cancellation and payment of the Surrender Value thereon, such Land Certificates shall be deemed to be no longer outstanding from and after the date fixed for surrender, and thereafter the holder thereof shall look only to such deposits for the Surrender Value.

Section 5—Form. Land Certificates shall be in such form as may be approved by the Board of Directors subject to the requirements of this Article XI. They shall be issued in numerical order and shall be signed by the President or Vice President and the Secretary or an Assistant Secretary.

In case any Officer who has signed any Land Certificate and ceased to be an Officer before the Certificate has been delivered, such Certificate may nevertheless be adopted and issued by resolution of the Board of Directors, and delivered by the club as though the Officer who signed such Certificate or Certificates has not ceased to be such Officer of the Club.

Section 6—Loss and Destruction. In case of loss or destruction of any Land Certificate, another Certificate may be issued in its place upon satisfactory proof of such loss or destruction and, at the discretion of the Club, upon giving to the Club a satisfactory bond of indemnity issued by a corporate surety in an amount and for a period satisfactory to the Board of Directors.

HOUSE RULES

The Clubhouse is under the supervision of the General Manager and the House Committee, who are responsible to the Board of Directors for the efficient operation of the facilities within the framework of the House Rules herein outlined.

GENERAL

1. **Hours of Operation**—The Clubhouse hours of operation will vary by season of the year. Specific hours of operation by month are scheduled in the club calendar of events published in the Cherry Pit. Weather conditions will determine exact schedule of hours.

2. **Dress Code**—Our Dress Code is designed to maintain an atmosphere consistent with the tradition of Golfing and Cherry Hills Country Club.

   In the spirit of accomplishing this, members, their families, and guests are requested to wear attire appropriate to the area of the Club in use.

   Management has the responsibility of properly enforcing these standards.

CLUBHOUSE:

I. Main/Lanai Dining Area:
   A. Coat & tie for males & appropriate attire for females.
   B. Males fifteen & under must wear coat with tie optional.

II. Sports Grill:
   A. Suitable casual, sports, and tennis attire.

III. General:
   A. Short shorts, cut-offs, bib overalls, jeans/denims, sleeveless shirts, T-shirts, swim suits, etc., are not considered appropriate attire.
   B. Shoes, sandals or other appropriate footwear shall be worn at all times on the club premises except in the immediate swimming pool area.
   C. Golf shoes with spikes are restricted in the Clubhouse except in the Grill, Golf Shop & Locker Rooms.

GOLF COURSE/PRACTICE TEE/PAR 3:

1. All males are required to wear golf shirts (tucked in) and golf slacks or appropriate length shorts with socks. Bermuda length shorts are considered appropriate. Short shorts, cut-offs, bib overalls, jean/denims, sleeveless shirts, t-shirts, swim suits, etc. are not considered appropriate attire and are not permitted.

2. Ladies shorts or golf skirts are to be of appropriate length. Golf slacks, culottes bermuda shorts and sleeveless tops are permitted. Halters, midriffs or short shorts are not considered appropriate attire and are nor permitted.

3. All players must wear either spiked golf shoes or rubber-soled (non-cleated) shoes

4. First offense violators of the Golf Dress Code will be informed of the offense by the Golf Committee and receive a letter of reprimand from the Golf Committee Second time offenders shall be required to appear before the Golf Committee.

TENNIS COURTS:

I. Players are required to wear regulation tennis shoes, shorts and shirts

SWIMMING POOL:

I. No cut-offs will be allowed.

First offenders of the Clubhouse, Tennis Courts, and Swimming Pool Dress Code will be informed of the offense by the Management Staff and shall receive a letter of reprimand from the House Committee. Second time offenders of these rules shall be required to appear before the Board of Directors.

SPECIAL FUNCTIONS

1. **Club Policy**—The Clubhouse is primarily for the general use of members of the Club, and all special functions require the review and approval of the House Committee. However, special functions are encouraged to increase utilization of the Clubhouse facilities and staff. The House Committee will objectively consider all member sponsored requests that, if approved, will not cause undue inconvenience to the general membership.

2. **Sponsorship**—A member must request and sponsor any special function held at the Club and assume personal responsibility and indebtedness incurred. A member does not have to personally be present at a sponsored event unless specifically required by House Committee approval.

3. **Special Function Rooms**—The Eisenhower Library, The Ballroom, The President's Room and The Terrace Room are Club areas available for special functions. The number of guests and services requested will normally determine room assignments except The Dining Room will normally not be approved unless the party size cannot be properly accommodated elsewhere.

4. **Wedding Receptions**—Members will be given special considerations for their daughter's wedding reception including use of The Dining Room when other suitable rooms are unavailable.

5. **Procedure**—Requests for special functions should be directed, in writing, to the General Manager for the attention of the House Committee. Full details describing the function, number of guests and services required should be included. Upon approval, the Catering Department will assume responsibility for finalizing all details and coordinating with all other Club departments. The Catering Department will supply to the sponsoring member a specific function sheet specifying exact requirements for the party, and copy of said sheet must be signed and returned to the Catering Manager no later than five business days prior to the function.

6. **Club Sponsored Parties**—Club parties are restricted to Club Members and out-of-town guests. Resident guests may be invited only as follows:

   (a) Male members may invite one woman guest.

   (b) Women members may invite one male escort.

   (c) The Social Committee, by so stating in the party announcement, may permit invitation of resident guests.

INDEBTEDNESS

1. Members and guests are required to sign charges for all services furnished; and in order to facilitate the keeping of accounts, it is requested that all indebtedness of members be paid by bank checks.

2. If any property of the Club is damaged or destroyed by any member or his guests, the amount of the loss caused thereby will be included in the member's account.

RESTRICTIONS

1. Except for valet parking attendants and the locker room area, no member or guest shall give any gratuity whatsoever to any employee of the Club, whether employed in the house or upon the grounds.

2. No member or guest shall send any Clubhouse employee out of the Club grounds.

3. Dogs will not be permitted on any part of the grounds except when on leash.

4. No subscriptions shall be solicited nor shall any article be exposed for sale, nor any advertisement displayed or circulated in the Clubhouse, or upon the Club grounds without first obtaining permission of the House Committee. Notices shall not be posted upon the bulletin board nor shall any picture or decoration be placed in the Clubhouse without the authority of the House Committee.

5. No member or guest may have checks cashed in excess of $50.00 during any one day Cash may be secured from the office by bank check only. This privilege is for members and their spouses only. No checks will be cashed for children or grandchildren.

6. The Men's Grill shall be restricted to use by men and male guests only except when used in conjunction with the Sports Grill for special functions.

7. Loud or profane language in or about the Clubhouse or grounds is expressly prohibited

8. Persons under twenty-one (21) years of age shall not be permitted in the Men's Grill unless accompanied by a member.

9. Persons under twenty-one (21) years of age shall not be permitted in the Men's Card Room under any circumstances.

10. No member or guest shall be permitted to possess or store alcoholic beverages in his or her locker or to posses or consume privately owned liquor, beer or wine in or about the lockers, showers, clubhouse or on the grounds.

11. Under current liquor licensing regulations no alcoholic beverages may be consumed or dispensed on the tennis courts east of University Boulevard.

12. No property of the Club is to be loaned to anyone.

LOCKER ROOMS

1. The Club shall not be responsible for loss of property from lockers occupied by members or guests or for other loss sustained by guests in the Clubhouse or on the Club premises, or for property of members, guests or visitors left on the premises.

2. No employee of the Club shall open any locker without the authority of the owner.

3. Children under sixteen (16) years of age shall not be permitted in either the Men's or Ladies' Locker Rooms unless accompanied by a member.

4. Children sixteen (16) years of age and older who are granted the privilege of either the Ladies' or Men's Locker Rooms will not be permitted to entertain guests in these areas unless accompanied by a member.

5. No member or guest shall be allowed to keep or store golf bags or clubs in the Locker Rooms, but they shall use the Club storage facilities as provided by the golf professional for such purpose.

GAMES

1. Card playing is permitted under such regulations as may be adopted by the Board of Directors. Card playing shall be confined to those rooms in the Clubhouse approved for such purpose except on special occasions as approved by the House Committee.

COMPLAINTS

1. Disciplinary action shall not be taken by any member or guest against any employee.

2. Members are requested to submit suggestions or complaints in writing addressed to the House Committee. Anonymous complaints will not receive attention.

LOST ARTICLES

1. Lost articles not claimed within ninety (90) days may be disposed of at the direction of the House Committee.

COLORS

1. The Club colors shall be red and white.

AMENDMENTS

1. These rules may be amended at any time by the Board of Directors.

GROUND RULES

Article I. General Rules

1. The care and management of the golf course, including all matches and tournaments thereon, shall be under the immediate supervision of the Golf and Grounds Committees, and all disputes shall be settled by these committees. Proper announcement of matches, tournaments, etc. will be placed upon the bulletin board.

2. No game or contest of any character, to which the public may be invited, shall be held upon any part of the Club grounds, without the previous permission of the Board of Directors.

3. Players are not permitted to pay cash for purchases or service.

4. Caddies or other employees finding golf balls, clubs or other articles of value on the Club grounds, and failing to return them to the caddie master, will be discharged.

5. The purchase of golf balls, clubs or other supplies or equipment from caddies or other employees, except in the Golf Shop, is strictly forbidden.

6. All members and their guests must register in the Golf Shop before starting their play

7. The use of range balls belonging to the Club Professional shall be restricted to the practice area only, and their use elsewhere on the course (including the Par 3 course) is hereby prohibited.

8. All members and their wives, children or guests, shall be prohibited from fishing in the lake on No. 18 except in the area around the dam where clearly marked with signs allowing such activity.

9. When a son or daughter reaches their 22nd birthday, they shall be considered a Guest, subject to guest rules.

Article II. Golf

Section 1—Tournaments. All golf play shall be governed by the rules of the United States Golf Association, except as modified by the local rules of the Club.

Local rules are printed on the back of the score cards, or posted on the bulletin board

Each member shall play in strict accordance with said rules. Any member found to be in violation thereof shall be subject to having his golfing privileges suspended by the Board of Directors. Juniors are not eligible to play in men's club championship events. Members playing in handicap tournaments will have handicaps determined by the Colorado Golf Association o another recognized golf association. In the event a member does not have such a handicap, he may play with a handicap determined from at least five eighteen hole rounds played at the Club The Golf Committee through the Golf Shop staff will determine the handicap. In order to compete, guests playing in invitational events will be required to have a handicap from the Colorado Golf Association or another recognized golf association.

[illegible]

Section 2—Playing Rules.

(a) Tee times. Chart A.

(b) Tee times. Chart B.

(c) No child under the age of eight (8) years is to be on the golf course at any time for any purpose.

(d) Green fees shall be $50.00 per day for a guest playing with a member during golf season (Men's Opening Day through Labor Day). $40.00 per day for a guest playing with a member after golfing season (Labor Day) and before Men's Opening Day. The fee shall be $75.00 all year for a guest playing without a member.

(e) Caddy Rules.

The base rate for a caddy is $10.00 per bag; if two people of a group are riding in a cart, they owe $2.00 apiece; four people riding in two carts owe $4.00 apiece.

Players are not permitted to ask for special caddies, but will be assigned caddies in their order. Exceptions to this rule are City, State, Club Championship Tournaments. Exceptions to this rule for ladies are City, State, Club Championships, Invitational Tournaments and Inter-Club days. Please do not ask Golf Shop to make exceptions other than listed above as they are held responsible for violations of this rule.

Due to the fact that many of our experienced caddies are no longer with us and that we will have many new caddies, we respectfully request that players cooperate with us in training the newer boys by making suggestions during play, to the end that we have well trained caddies. We know that the caddies themselves will appreciate suggestions which will improve their work.

No member over the age of thirty five is allowed to carry his own bag if caddies are available.

(f) Foursomes shall have prior golf playing rights and privileges on the golf course. Twosomes and threesomes shall get special instructions from the starter or the golf professional as to rules, starting times, and starting fees. Between the dates of Men's Opening Day through Labor Day play shall be conducted in no larger groups than a foursome. Any violation or infraction of this latter rule, when so found and ordered by the Board of Directors, shall result in all members of any group larger than a foursome, being fined $50.00 each; provided, however, that any complaint of

TEE TIMES FOR GOLFING SEASON from Men's Opening Day to Labor Day
(CHART A)

	MON	TUE	WED	THU	FRI	SAT	SUN	Holidays
Resident	All Day	All Day	All Day	All Day	All Day	All Day	All Day	All Day
Special Resident SR-A, B, C & PL	All Day	All Day	All Day	All Day	All Day	After 11 30 a m *	All Day	After 12 30 p m *
Non-Resident	All Day	All Day	All Day	All Day	All Day	After 11 30 a m *	All Day	After 12 30 p m *
Ladies 18	All Day	Before 10 a m After 3 p m	Before 8 a m — Finished by noon	Before 9 30 a m After 3 p m	Before 9 30 a m After 3 p m	After 3 p m	After 11 a m	After 12 30 p m
Ladies 9	All Day	Before 10 a m After 3 p m	Before 10 a m Finish by 12	Before 10 a m After 3 p m	After 3 p m	After 3 p m	After 11 a m	After 12 30 p m
Ladies Tee-off #10	All Day **	Before 8 30 a m After 5 p m **	Before 8 a m	Before 8 30 a m After 5 p m **	Before 8 30 a m After 5 p m **	After 5 p m **	After 1 p m **	After 2 30 p m **
Junior Girls	All Day	Before 10 a m After 3 p m	Before 10 a m Finish by 12	Before 9 30 a m After 3 p m	Before 10 a m After 3 p m	After 3 p m	After 1 p m accompanied After 3 30 unaccompanied	After 2 p m accompanied After 3 30 unaccompanied
Junior Girls 12 or less handicap	All Day	Before 10 a m After 3 p m	Before 9 30 a m Finish by 12	Before 9 30 a m After 3 p m	Before 10 a m After 3 p m	After 3 p m	After 11 a m	After 12 30 p m
Junior Boys	All Day	After 3 p m	Before 9 30 a m	Before 9 30 a m After 3 p m	After 3 p m	After 3 p m	After 1 p m accompanied After 3 30 unaccompanied	After 2 p m accompanied After 3 30 unaccompanied
Junior Boys 12 or less handicap	All Day	After 3 p m	Before 9 30 a m After 3 p m	Before 9 30 a m After 3 p m	After 3 p m	After 12 30 p m	All Day	After 12 30 p m
Guest Ladies	All Day	Before 10 a m After 3 p m	Before 8 a m Finished by 12	Before 9 30 a m After 3 p m	Before 9 30 a m After 3 p m	All out of town After 3 p m	All out of town After 11 a m	All out of town After 12 30 p m
Guest Men	All Day	All day except 11 30-12 30	All day except 11 30 12 30	All day except 11 30-12 30	All day except 11 30 12 30	All out of town After 12 30 p m	All out of town All Day	All out of town After 12 p m

* Can call Saturday a.m. for open tee time, but cannot join group already signed up.

** Providing it does not interfere with play coming up on #9.

CHERRY HILLS COUNTRY CLUB

TEE TIMES FOR GOLFING SEASON from the Day After Labor Day to Men's Opening Day
(CHART B)

	MON	TUE	WED	THU	FRI	SAT	SUN	Holidays
Resident	All Day	All Day	All Day	All Day	All Day	All Day	All Day	All Day
Special Resident SR-A, B, C & PL	All Day	All Day	All Day	All Day	All Day	All Day	All Day	All Day
Non-Resident	All Day	All Day	All Day	All Day	All Day	All Day	All Day	All Day
Ladies 18	All Day	Before 10 a m After 1 30 p m	Before 8 a m Finish by 12	Before 9 30 a m After 1 30 p m	Before 9 30 a m After 1 30 p m	After 1 30 p m	After 11 00 a m	After 12 30 p m
Ladies 9	All Day	Before 10 a m After 1 30 p m	Before 10 a m Finish by 12	Before 10 a m After 1 30 p m	Before 10 a m After 1 30 p m	After 1 30 p m	After 11 00 a m	After 12 30 p m
Ladies Tee-off #10	All Day**	Before 8 30 a m After 3 30 p m **	Before 8 a m Finish by 12**	Before 8 30 a m After 3 30 p m **	Before 8 30 a m After 3 30 p m **	Before 8 30 a m After 3 30 p m **	After 1 p m **	After 2 30 p m **
Junior Girls	All Day	Before 10 a m After 1 30 p m	Before 8 a m Finish by 12	Before 9 30 a m After 1 30 p m	Before 9 30 a m After 1 30 p m	After 1 30 p m	After 1 p m accompanied After 3 30 p m unaccompanied	After 2 p m accompanied After 3 30 p m unaccompanied
Junior Girls 12 or less handicap	All Day	Before 10 a m After 1 30 p m	Before 8 a m Finish by 12	Before 9 30 a m After 1 30 p m	Before 9 30 a m After 1 30 p m	After 1 30 p m	After 11 a m	After 12 30 p m
Junior Boys	All Day	After 1 30 p m	Before 9 30 a m	Before 9 30 a m After 1 30 p m	After 1 30 p m	After 1 30 p m	After 1 p m accompanied After 3 30 p m unaccompanied	After 2 p m accompanied After 3 30 p m unaccompanied
Junior Boys 12 or less handicap	All Day	After 1 30 p m	Before 9 30 a m After 3 p m	Before 9 30 a m After 1 30 p m	After 1 30 p m	After 12 30 p m	All Day	After 12 30 p m
Lady Guests	All Day	Before 10 a m	Before 8 a m Finish by 12	Before 9 30 a m	Before 9 30 a m	After 1 30 p m	After 11 a m	After 12 30 p m
Men Guests	All Day	All Day	All Day	All Day	All Day	All Day	All Day	All Day

** Provided it does not interfere with play coming up on #9.

such violation shall be duly signed and attested to by a member playing golf at th time of such infraction. A second offense by any violator shall subject such perso to a fine of $100.00. A third offense shall subject any violator to loss of the privilege of the golf course for such a period of time as may be determined by the Board o Directors.

From Men's Opening Day through Labor Day foursomes only will be permitted to use the course during the following days and times:

Wednesdays—11:30 a.m. to 2:30 p.m.
Thursdays—11:30 a.m. to 2:30 p.m.
Saturdays—8:00 a.m. to 1:00 p.m.
Sundays—8:00 a.m. to 2:00 p.m.
Holidays—8:00 a.m. to 12:30 p.m.

Provided that, if a group less than a foursome has a starting time and is ready to play and no other member or members are available to complete a foursome, such group will be permitted to play.

(g) Players while looking for a lost ball or when holding up foursomes behind them sha allow other foursomes to pass through. After signaling the following foursome to pla through, they shall not continue their play until these players have passed and are ou of range.

(h) Do not disturb players in other foursomes. Loud talk, profane language, unnecessar noise, or movement shall be kept at a minimum at all times, especially on holes where tees and greens are in close proximity. Please do not rudely approach (yourself o caddy) occupied tees.

(i) All players before making a shot shall be certain that the foursome ahead is well out o range.

(j) When result of hole has been determined, players shall leave the putting gree immediately.

(k) Players shall see that any turf, or divot, cut or displaced by them, is replaced an pressed down immediately.

(l) No practicing of any kind shall be allowed on or to any regular green, or in any sa trap adjacent to any regular green, and any member violating this rule shall be fined the sum of Fifty Dollars ($50.00) for each violation, and continued violation of this rule sha be cause for immediate suspension of the offending member.

CHERRY HILLS COUNTRY CLUB

(m) Any player damaging a green, in any manner, shall be assessed the sum of $100.00 Members are responsible for their guests.

(n) Players shall see that all footprints made by them in sand traps are smoothed out

(o) Players shall see that caddies do not injure cup by standing too close, or by careless handling of the flag stick.

(p) Scores for all eighteen hole rounds, played at the Club will be turned in for handicap purposes. The Golf Committee will review and adjust any handicaps which it deems to be inappropriate.

(q) Tee Markers:

Gold Tees—Tournament tees only.
Blue Tees—Tournament tees only
White Tees—Men (all classes)
Red Tees—Ladies (all classes)

(r) All foursomes or groups stopping for food or beverage at the snack bar located by No. 7 tee shall automatically invite the group behind them to play through.

(s) All Special Members, "A," "B," and "C" and P.L.s will be restricted from playing golf on Saturday until after 11:30 a.m. from Men's Opening Day through Labor Day except on those Saturdays when there is an officially sanctioned club tournament. However, any open time available Saturday morning may be taken by Special Members and Non-Residents. You may NOT fill into groups already down on the play sheet.

(t) NO OUTSIDE GOLF EVENTS WILL BE CONSIDERED BETWEEN MEN'S OPENING DAY AND LABOR DAY.

(u) Club Care fee is $72.00 per year. Only one set of clubs and bag plus an empty carry bag are allowed per space in the Bag Room.

SLOW PLAY RULE

(v) Your Golf Committee feels that SLOW PLAY is not in the best interests of the enjoyment of the game by the majority of the membership, and SLOW PLAY WILL NOT BE TOLERATED. SLOW PLAY is defined as a group taking over four (4) hours and 10 minutes to complete a round if they have an open hole in front of them at the final tee. All members of a group involved in SLOW PLAY will be warned in writing. If a member is involved in SLOW PLAY a second time, he will not be allowed to play before 1:30 p.m on Saturdays and Holidays or before 2:00 p.m. on Wednesdays or Thursdays for a period of two weeks. The same penalty will apply to any further violations. Any member may appeal this penalty by appearing before the Golf Committee.

(w) The responsibility for the closing of the course because of weather or natural phenomenon and the limiting of the use of carts thereon rests in the Grounds Superintendent, and in his absence the Golf Professional shall bear the responsibility.

Section 3—Guest Privileges

Guests and the members of the immediate family shall be restricted in the use of the golf course to the following times and days of play, provided that all guest privileges may be suspended by the Golf and Grounds Committee on days of tournaments or special events:

A. Resident Guests

(1) Resides within seventy (70) air miles from the club.
(2) Guests must register in the Golf Shop and give home address.
(3) Same guest cannot play more than twice in any calendar month.
(4) No more than three (3) guests on any one day per member.
(5) MUST PLAY WITH SPONSORING MEMBER.
(6) Must observe all other House and Ground Rules.
(7) Members only have privilege of inviting guests, and are responsible for all their charges, including green fees.
(8) Green fees shall be $50.00 per day per guest if playing with a member during golf season and $40.00 per day for a guest playing with a member after Labor Day and until Men's Opening Day.
(9) May play at any time subject to (6) above except that from Men's Opening Day to Labor Day of each year have no golf privileges on Saturdays, Sundays, Holidays and on days of tournaments and special events.
(10) A member may not sponsor more than 18 guests during the golf season, Men's Opening Day through Labor Day. This restriction is exclusive of one-day invitationals and/or other Club sponsored events. Family guests limited to parents, grandparents, children and grandchildren will not be counted in the 18 guest limitation; however, all other guest rules will apply.
(11) Groups in which two or more guests are playing must take a cart or a caddie with a cart, if caddies are available. Guests may not walk or carry bags.
(12) Cannot tee-off Tuesday thru Friday between 11:30 a.m. and 12:30 p.m.

CHERRY HILLS COUNTRY CLUB

B. Non-Resident Guests

(1) One-Day Guest Privileges playing with a Member or obtain Guest Card.

(a) Must reside seventy (70) or more miles from the Club.

(b) Must register in Golf Shop prior to playing golf, and give home address. Golf Shop will furnish golf rules.

(c) Cannot tee-off Tuesday thru Friday between 11:30 a.m. and 12 30 p.m. Must play with member Saturday, Sunday and Holidays.

(d) Must observe all other House and Ground Rules.

(e) May be invited only by a member, who shall be responsible for all charges, including green fees.

(f) Green fees shall be $50.00 per day per guest if playing with a member, or $75.00 per day per guest if not playing with a member.

(g) May play at any time except on days of tournaments or special events.

(h) A member may not sponsor more than 18 guests during the golfing season, Men's Opening Day thru Labor Day. This restriction is exclusive of one-day invitationals and/or other Club sponsored events. Family guests limited to parents, grandparents, children and grandchildren will not be counted in the 18 guest limitation; however, all other guest rules will apply.

(i) Groups in which two or more guests are playing must take a caddie if caddies are available. If no caddies are available, guests may walk and carry bags.

(2) Guest Cards.

(a) Must reside seventy (70) or more air miles from the Club.

(b) Must register in Club Manager's Office, who shall furnish guest with golf rules and guest card.

(c) Must register in Golf Shop prior to playing golf, and give home address.

(d) Must observe all other House and Ground Rules including taking a caddie with a cart.

(e) Need not play with member.

(f) May be invited only by a member, who shall be responsible for all charges, including green fees.

(g) May not use golf course Men's Opening Day thru Labor Day on Saturday, Sunday, Holidays, days of tournaments, special events, or at such other times as may be designated by the Golf Professional.

(3) Other Golf Guest Privileges:

(a) The Golf Committee may authorize the General Manager of the Club and the Club Golf Professional to extend the courtesy of playing and to request issuance of guest cards in certain special situations.

(4) Non-Resident Members:

(a) Must register in Golf Shop prior to playing golf and give home address.

(b) Shall be entitled without being charged any green fees to 12 rounds of golf in one calendar year whether played by him or played by a member of his immediate family. Thereafter must pay applicable guest fees for himself and members of his immediate family. Must pay full fees for guests except during Hillsdilly or other special events as designated by the Golf Committee.

(c) Guests and members of family are governed in their use of the course by Ground Rules.

Article III. Electric Golf Carts

1. Golf carts shall be used at all times in such a manner as to not damage or destroy the golf course.

2. Golf carts MUST be kept on cart paths at ALL times on the first hole. Thereafter, cart paths should be used as much as possible where available. When not on paths, carts should remain primarily in rough areas, crossing fairways where necessary. If you have been granted permission by the Golf Committee (which consists of letters from 2 medical doctors, explaining why you should be allowed to drive off the cart paths, these

letters should be sent to the Golf Committee) you will be issued a white flag. The white flag allows you to take the cart off the path on the first hole. This flag is not transferrable. All other cart rules MUST be observed.

3. When approaching greens or tees, cart paths surrounding or adjacent to these entities must be used. When not available, carts should be kept at least thirty feet away. Please follow cart signs at all times.

4. No person under 21 years of age may operate a golf cart at any time.

5. Please do not spin cart wheels. Start slowly and with care.

6. When possible do not follow other cart tracks and please avoid soft spots in the turf.

7. Members using golf carts shall be held fully responsible for any or all damages, including damages to the carts that are caused by the misuse of the carts, and they shall reimburse the Club for any and all damages that it may sustain for any reason of such misuse.

8. Repeated violations may result in loss of golf cart privileges as determined and decided upon by the Golf Committee.

9. No more than two (2) persons and two (2) bags shall ride in, or upon, a golf cart at any time.

10. No privately owned golf cart of any kind shall be used or operated upon the golf course or grounds, without the express permission of the Golf Committee or the Board of Directors.

11. Fees for rental of electric carts shall be $20.00 per 18 holes and $10.00 per 9 holes. One person on a cart is one-half of above fees. Golfers using carts when others in group are walking using caddies—$2.00 each.

12. The responsibility for the closing of the course because of weather or natural phenomenon and the limiting of the use of carts thereon rests in the Grounds Superintendent and in his absence the Golf Professional shall bear the responsibility.

13. Carts must be in by dark.

Article IV. Dress Code

GOLF COURSE/PRACTICE TEE/PAR 3:

1. All males are required to wear golf shirts (tucked in) and golf slacks or appropriate

length shorts with socks. Bermuda length shorts are considered appropriate. Short shorts, cut-offs, bib overalls, jean/denims, sleeveless shirts, t-shirts, swim suits, etc. are not considered appropriate attire and are not permitted.

2. Ladies shorts or golf skirts are to be of appropriatelength. Golf slacks, cutlottes bermuda shorts and sleeveless tops are permitted. Halters, midriffs or short shorts are not considered appropriate attire and are not permitted.

3. All players must wear either spiked golf shoes or rubber-soled (non cleated) shoes.

4. First offense violators of the Golf Dress Code will be informed of the offense by the Golf Committee and receive a letter of reprimand from the Golf Committee. Second time offenders shall be required to appear before the Golf Committee.

ARTICLE V. Tennis Rules and Regulations

1. **TENNIS SEASON.** The tennis season shall be defined as April 1 through October 31. From November 1 through March 31 there will be no court reservations and all courts will be on a first-come, first-served basis. This means adults will not be able to bump children on the old courts.

2. **REGISTRATION.** Each person shall have the responsibility and duty to register in the Pro Shop if playing at West University Courts (old courts) or at the registration site provided at the East University Courts (new courts).

3. **USE OF COURTS.**

   (a) No children will be allowed to play on the East University Courts (new courts) unless they are accompanied by a parent (mother or father). No children under any circumstances will be allowed to walk across University Boulevard. "Children" includes all those under eighteen (18) years of age.

   (b) No food is allowed on courts at any time.

   (c) Tennis attire shall be worn for play. Swimsuits shall not be allowed. Shirts must be worn at all times. Regulation tennis shoes must be worn by all players. Spectators on the courts must wear tennis or soft-soled shoes.

   (d) Grandchildren of members shall have privileges of courts without charge.

   (e) The Tennis Professional may give lessons to non-members.

4. **RESERVATIONS.** Times will be blocked for inter-club matches, men's night, and other special group events. Courts not being used for these events may be reserved by individuals subject to the following conditions and limitations:

   (a) Only juniors may reserve courts on West University (old courts); however, after 5:00 p.m., if all East Courts (new courts) are full, adults may bump juniors from May 31 through September 1.

   (b) Reservations may be made by calling the Tennis Shop beginning the day prior to the desired playing time. Reservations will be taken at 9:00 a.m. or after.

   (c) Courts may be reserved for one and ½ hour periods from 9:00 a.m. to 6.00 p.m. Before 9:00 a.m. and after 7:30 p.m., all times are on a first-come, first-served basis.

   (d) Any adult member (18 or over) may reserve a court for a one and one-half hour period each day. He may make reservations for one court at a time, and for only himself and or his or her spouse.

Article VI. Amendments.

These rules may be amended at any time by the Board of Directors.

Supreme Court
STATE OF COLORADO
STATE JUDICIAL BUILDING
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DENVER, COLORADO 80203
(303) 837-3747

WILLIAM H. ERICKSON
JUSTICE

1988 AUG 24 PM 1:47

August 22, 1988

The Honorable Paul Simon
United States Senator
United States Senate Committee on the Judiciary
Washington, D.C. 20510-6275

Dear Senator Simon:

On May 16, 1988, I appeared before you and Senator Thurmond so that you could determine my qualifications to be a United States District Court Judge. The subcommittee's primary inquiries centered on my membership in Cherry Hills Country Club. On May 20, 1988, you wrote me and informed me that you had been advised that "Cherry Hills Country Club is 'notorious' for not accepting Jews or members of minority groups." For that reason, you advised me to resign from the club. Prior to the questions that were developed in the course of confirmation, I was unaware of any issue or any alleged claim of discrimination at Cherry Hills County Club. If any discriminatory membership procedures or practices existed that could be perceived by the public as evidence of invidious discrimination, I did not know of them. After reviewing your letter, I contacted the President of the Cherry Hills Country Club and several members of the Board of Directors, and made further inquiries about the membership policies of the club. In my July 5, 1988 letter to you, I set forth the reasons why I would not resign from Cherry Hills Country Club. I emphasized that resignation would not correct any practices of invidious discrimination that may have existed in the past and stated that it was far better for a judge to work towards the elimination of any discriminatory practices than to merely resign and turn his back on the problem. In addition, I was informed that certain of your colleagues would deem my resignation to be an admission of invidious discrimination.

On July 19, 1988, I wrote David C. Little, the President of Cherry Hills Country Club, and advised him of the issues you raised at the confirmation hearing and in your letter. I suggested that if there was merit to your charges, appropriate action should be taken by the Board of Directors and the membership to change the policies of the club. A copy of that letter is enclosed. Since that time, I have been advised that the Board of Directors has appointed a committee that has carefully reviewed the club's bylaws and has proposed amendments to insure that the bylaws are gender neutral and that no disparity exists as to men, as contrasted to women members. The enactment of the amendments should eliminate any question of de jure discrimination in the membership policies of Cherry Hills Country Club.

On a de facto basis, I can inform you that earlier this week I had the privilege of joining in the nomination of one of our most prominent businessmen who is of the Jewish faith. I am advised that other individuals of the Jewish faith are also being considered by the membership committee. There were a substantial number of club members that joined me in the nomination, including your friend Mark Hogan. If I were to advise you of the name of the applicant I would be breaching the confidentiality of the membership process. I am certain that the membership committee will act favorably on the application for membership in the very near future and I will continue to work to that end.

To the best of my knowledge, no black person has ever applied for, or has been deterred from, making an application for membership in the club. I have, however, made a number of calls to determine whether several black friends of mine, who are avid golfers, would be interested in joining Cherry Hills Country Club. Clearly, any person, black or white, who is not an addicted golfer would be foolish to pay what I believe is an extremely high initiation fee in addition to monthly dues.

The three prominent black persons who I contacted, with the approval and endorsement of a number of club members, told me that they were impressed with the quality of the golf course but were less than enthusiastic about paying a $30,000 initiation fee. When I asked one black lawyer, whom I feel certain would be admitted if he applied for membership, whether he would consider membership in Cherry Hills Country Club, he expressed interest until he heard what the initiation fee and monthly dues were. He advised me that at some later time he might reconsider, but that his wife would divorce him for even thinking about spending $30,000 to improve his golf game at this stage in his career.

Another black person, who has played the Cherry Hills course numerous times, may consider membership, but was appalled and discouraged by the initiation fee. A prominent black lawyer, who is a golfing enthusiast, is reviewing the possibilities of membership with his firm since his firm follows the practice of paying club initiation fees and dues for members of the firm. I am certain at this time that the application of any person who is black or from any other minority group will be given careful and equal consideration by the membership committee of Cherry Hills. I hope that the actions taken by the leadership of Cherry Hills eliminates any negative conception, or misconception, regarding the membership policies of the club.

I sincerely appreciate the interest that you have taken in reviewing my qualifications, and hope that this letter will help resolve any claim of invidious discrimination at Cherry Hills Country Club. When a United States Senator with your distinguished record accuses either an organization or any of its members of invidious discrimination it creates a stigma and taint that is difficult to remove. I know that I have never discriminated against any person because of race, religion, or gender. If Cherry Hills has in the past invidiously discriminated against Jews and minorities, I was unaware of the practice and cannot admit to guilt by association because of former membership policies. The affirmative steps being taken by the club to broaden membership and assure equal opportunities to every person who seeks membership has convinced me that there is no invidious discrimination at Cherry Hills Country Club.

Sincerely yours,

W. Erickson

William H. Erickson

encl.

cc: Hon. Strom Thurmond
Hon. William L. Armstrong
Hon. Timothy E. Wirth
Department of Justice
David Little, President, Cherry Hills Country Club
Charles Brega, Past President, Cherry Hills Country Club

Supreme Court
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WILLIAM H. ERICKSON
JUSTICE

July 19, 1988

David C. Little, Esq.
5445 D.T.C. Parkway
Suite 800
Englewood, Colorado 80111

Dear Dave:

You are entitled to see the letter that I wrote to Senator Simon. I believe my letter concluded my efforts to obtain confirmation by the United States Senate.

I would suggest to you that the Board of the Cherry Hills Country Club should give serious consideration to the complaints that have been made by Senator Simon to avoid any claim that the Cherry Hills Country Club Membership Committee practices invidious discrimination in its selection of new members because of their race, national origin, gender, or religious preference.

After having undergone an exhaustive examination by the FBI on at least five occasions and having served seventeen years on the Supreme Court with a background of twenty years of trial practice preceding that, it seems ludicrous to conclude that my confirmation by the United States Senate Judiciary Committee would turn on my membership in the Cherry Hills Country Club. As you know, I have not participated widely in club activities and I have done little more than play in the annual tennis tournament and have dinner at the club from time to time. My wife, children, and grandchildren use and thoroughly enjoy the club.

I think we all should take pride in our membership in Cherry Hills and not have to apologize for complaints of the type made by Senator Simon. He wrote me that he had been notified by a friend of his that Cherry Hills Country Club was notorious for its exclusion of jews and minorities from its membership. I do not believe the complaint had a legitimate foundation, but I think that it should be a matter of concern to us that such complaints can be made. If the complaint has a foundation, the practice should be eliminated without delay.

Sincerely yours,

William H. Erickson

WHE:ps
cc: Milton E. Meyer, Esq.
Charles E. Brega, Esq.

Senator SIMON. Mr. Lake is next.

TESTIMONY OF SIMEON TIMOTHY LAKE III, HOUSTON, TX, TO BE U.S. DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF TEXAS

Mr. LAKE. Thank you, Mr. Chairman.

Senator SIMON. Mr. Lake, you have been a member of the bar for 19 years, and yet in looking at the questionnaire you filled out, one of the things that is rather striking and that is a bit unusual, frankly, for a nominee, is the small amount of pro bono work that you have done. According to the questionnaire you filled out, you have not done any since your first year as an attorney.

Do you have any explanation for this, or are there things that should have been included in the questionnaire that were not?

Mr. LAKE. Frankly, Mr. Chairman, I think I was too conservative in my construction of what pro bono meant. I took it to mean organized bar activities, organized bar pro bono efforts, rather than individual representation of people.

I have been active much more than my questionnaire represents. Since being licensed as a lawyer, when I was a prosecuting attorney in Vietnam, although I was not allowed to defend accused because I was not certified by the Judge Advocate General Corps, I was asked by a black airman to defend him as his personal counsel because he felt that there was some form of discrimination in the charges brought against him. I, along with his appointed counsel, did defend him in the trial of the case and he was acquitted of the charges of insubordination.

When I returned to Fulbright and Jaworski, I have counseled without charge a number of people who came into the firm seeking legal advice and——.

Senator SIMON. And this was during what period?

Mr. LAKE. This was the period roughly from my return to the active practice from 1972 through, say, 1980 as a young lawyer.

Our firm, as you might suspect, a firm headed by Leon Jaworski, was very active in doing pro bono work, and I represented—generally gave advice, but I did actually try a contested lawsuit in which I represented the Mount Pilgrim Baptist Church, which was a black church, in a dispute over the title to the church and the church property, a lawsuit that was tried and we prevailed.

[The following material was subsequently supplied for the record:]

STATEMENT

Page 46, lines 10-16

The reference to the Mount Pilgrim Baptist Church at page 46 of the transcript was corrected by my letter of May 20 to the Senate Judiciary Committee. I am enclosing a copy of that letter, together with pages 7-10 of the answers that accompanied the letter. The particular correction to page 46 of the transcript appears at pages 8-10 of the enclosed answers.

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May 20, 1988

Senator Paul Simon
United States Senate
Committee on the Judiciary
Washington, D.C. 20510-5275

Dear Senator Simon:

Enclosed are my written answers to the additional questions that accompanied your letter of May 18, 1988. I attest that these answers are given under the same oath that I swore at the Committee hearing on May 16, 1988.

I appreciate very much your prompt and thorough consideration of my nomination.

Very truly yours,

Sim Lake

SL/bma
Enclosures

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4. In your testimony before the Committee, you stated that you have on a number of occasions during your career provided legal advice without compensation. Would you please provide to the Committee a description of the matters upon which you provided advice without compensation, including the approximate date or dates the advice was provided, the amount of time you devoted to the matter, and a brief description of the issue involved. In addition, you stated that you at one time represented a black church in litigation. Would you please provide the Committee with the details of that representation? Did you receive a fee for the representation?

ANSWER: As I stated in my answers to the Committee's Questionnaire, my primary non-compensatory legal activities in recent years have involved training of new lawyers at Fulbright & Jaworski and serving on the Editorial Board of The Houston Lawyer. In addition, as I advised the Committee at the May 16 hearing, over the years I represented a number of people without compensation.

In the spring of 1971 I was assigned to the Office of Staff Judge Advocate of the 23rd Infantry Division in the Republic of Vietnam to act as a prosecuting attorney. Since I was not a member of the Judge Advocate General's Corps, I was not assigned to represent defendants. During my tenure at Chu Lai, Vietnam, an enlisted man in the Air Calvary Division asked that I represent him in addition to his assigned counsel in defending charges brought against him in a special court-martial. The soldier in question, whose name I do not remember, was black, and perceived that the charges against him may have been racially motivated. I along with his assigned counsel tried the case, and I believe that he was acquitted of all charges.

The other pro bono work I referred to in my testimony involved providing legal services to various people while I worked at Fulbright & Jaworski. In reviewing my files I have identified seven specific instances of such work, in addition to the two indigent criminal cases described in my answers to the Committee's Questionnaire, and there may have been others on which I did not open a file. These matters varied in the type and amount of work involved and included counseling, writing letters, performing legal research, and meeting with third parties to investigate or resolve disputes. The types of matters included negotiating a recision of an overreaching health spa contract, contesting excessive utility charges, assisting in pursuing insurance claims, and investigating the death of a client's child for possible medical malpractice.

The additional specific instance I referred to in my testimony involved the representation of the Mount

Pilgrim Baptist Church and several individual members of the Board of Deacons from 1974 through 1977 in a lawsuit styled George Nash, et al. v. Essie Harris, et al., Cause No. 1,019,750, in the 165th Judicial District Court of Harris County, Texas. The suit involved the right to money received by the church as proceeds for land condemned by the City of Houston, the right of the church to sell pews, musical instruments and other personal property, and the right of the church to sell additional real property to another church. A judgment was ultimately entered in favor of my clients ordering that they recover fee simple title to the property, together with all improvements thereon and that the Mount Pilgrim Baptist Church be declared successor-in-interest to the original grantee of the property in question.

I prepared and filed an Original and Amended Answer, a Motion to Show Authority and Motion for Production and Inspection, a Motion to Quash Interrogatories and for Protection, prepared and presented two witnesses for deposition, reviewed documents, researched the law, prepared a Trial Memorandum and a Reply Memorandum, had a number of conferences with the deacons of the church, tried the case, prepared the judgment, and assisted the church with the sale of its property.

Before the hearing on May 16 I checked with the firm's Accounting Department and was advised that no bill was ever sent to our clients in this matter. Since the hearing I have obtained and reviewed the entire file in connection with responding to Senator Simon's May 18 letter. I have now determined that after the church property was sold, a bill was sent in August of 1977 for $2,500 plus $29.45 in disbursements, which was paid. This fee was substantially less than the firm would have charged to other clients. The firm's records reflect that the firm devoted 76 hours to this matter, of which 49.50 hours represented my time. I apologize to the Committee for this inadvertent error in my earlier testimony and ask that this answer be placed in the record to correct my testimony.

Mr. **Lake**. I have also, as the editor and a member of the board of the "Houston Lawyer," sought to give a forum by which all facets of the bar could receive representation. For too long, I think the organized bar has been perceived as a tool of the large establishment law firms.

When I was editor, I appointed the first black member of the "Houston Lawyer" board. I actively brought women into the board and I actively appointed a Jewish member of the board, who I have just recommended to become the new editor.

As editor, I solicited articles dealing with the rights of women, dealing with the rights of handicapped, dealing with juvenile rights, so that it would not be a publication just devoted to the interests of the well-heeled civil practitioner, but would represent all interests of the community.

Senator **Simon**. I appreciate that. Obviously, your assistance there is more extensive than the questionnaire would indicate.

You belong to the Houston Country Club. You heard the discussion we just had with Justice Erickson.

Mr. **Lake**. Yes, sir.

Senator **Simon**. Do you have any reflections on that? Are you aware of the Code of Judicial Conduct and what it says there?

Mr. **Lake**. I read the Code of Judicial Conduct, and like Justice Erickson, I have conducted an investigation of the facts surrounding the Houston Country Club. The Houston Country Club has women who are regular members. One of the early members of the Houston Country Club was John Ben Taub, who was one of the leaders of the Jewish community.

I am told by the president of the country club now and by the general manager that we do now, and have throughout our life, had members of all religions and all national origins.

We have never had a black member. I have asked both the president and the current manager and other people who have been members for a long time who I respect and have been advised that no black has ever sought to become a member.

I would actively, as I indicated in writing in my response to your questionnaire, support black and other minorities as members of the club. The bylaws and the charter of the club do not discriminate. I'm told by the board that they do not discriminate.

The commentary on the canon says that ultimately it must be determined by the conscience of the individual judge. Judge John Brown, who was the former chief judge of the fifth circuit and the leader of the civil rights movement in Texas, was and is a member of that club.

Leon Jaworski, who not only is known for the Watergate prosecution, but was also special prosecutor of former Governor Ross Barnett, was a member of that club until his death.

I am convinced in my own mind that that club has not practiced discrimination, whether invidiously or otherwise.

Senator **Simon**. If a black or Hispanic were to apply to the Houston Country Club and were to be turned down on the basis of race, what would your conduct be at that point?

Mr. **Lake**. I would investigate the facts and if that were true, I would resign.

Senator **Simon**. One other point. Through the process of our investigation, we have learned there is a little criticism of your role involving the placement of a waste site. Do you care to comment at all about that?

Mr. **Lake**. I've been asked by the very thorough committee staff about two facets of that lawsuit and I can start at the beginning, but I'm not sure you want to go back to the genesis.

Senator **Simon**. I do not want a lengthy explanation. If you have a summary explanation for me, I would appreciate it.

Mr. **Lake**. All right, sir. A company called Southwestern Waste Management, which was a company 80 percent owned by a man named William Walker, bought a piece of land in northeast Harris County, Texas, and applied for and was granted a permit to operate a municipal landfill.

Mr. Walker's law firm received a minority interest in the stock of the corporation for performing legal services in connection with setting up the corporation and representing him.

The company, Southwestern Waste, did not have the capital to actually develop the site, do the earth work and other improvements necessary to turn it into an operating landfill.

So the company sold its stock and its assets to Browning-Ferris Industries, which has been a longtime client of mine. Shortly after Browning-Ferris concluded the acquisition, a lawsuit was filed alleging that Southwestern Waste located the site because it was in a predominantly black area, and that the State of Texas granted a permit because it was in a predominantly black area.

The case was tried. At a preliminary injunction hearing which lasted over 2 weeks, which I can tell the Chairman is a long time for a preliminary injunction hearing, Judge Gabrielle McDonald denied a preliminary injunction.

The case then proceeded through the discovery process and was tried on the merits some 4 or 5 years later. I don't have the exact date; it's in my questionnaire response. Judge John Singleton granted our motion to dismiss, finding that there was no discrimination by anybody, and the United States Court of Appeals for the Fifth Circuit affirmed that decision.

Senator **Simon**. During the course of your representation in the Browning-Ferris case, you had occasion to consult with a State senator by the name of Jack Ogg.

Mr. **Lake**. Yes, sir.

Senator **Simon**. Questions were later raised about a $25,000 fee that Senator Ogg received for consulting work in this case. Since you apparently were the person consulted with and that incident later resulted in his being indicted for bribery and tax evasion, do you have any comments, or do you believe he provided services meriting the $25,000 payment?

Mr. **Lake**. If I might just—I didn't mean to interrupt you.

Senator **Simon**. Can you explain the situation?

Mr. **Lake**. If I might explain those facts, the lawsuit was filed against Browning-Ferris in late October, I believe, of 1979. Browning-Ferris called me, thinking it was some type of environmental lawsuit. I do chiefly energy and environmental litigation.

We didn't realize until 3 or 4 days prior to the hearing when we actually got the complaint that it was a civil rights case. That's the only civil rights case I've ever been involved in. I didn't know any of the facts, much less know the law.

So I looked for somebody who could fill me in on the facts. Browning-Ferris was not involved in obtaining the permit. It bought the assets and the stock of Southwestern Waste.

Senator Ogg was at that time a member of the law firm of Sowell, Ogg, and Capps. Senator Ogg and I had been opponents in another lawsuit approximately 2 years earlier and I knew him to be a competent trial lawyer.

I called Senator Ogg to determine what the facts were in connection with the incorporation of Southwestern Waste, the selection of the land that they ultimately acquired, the application for the permit, and the sale to Browning-Ferris, because I was technically representing Southwestern Waste since we had acquired their assets and bought their stock and they were a named defendant.

I consulted with him on a very frequent basis during November and December of 1979 during the preliminary injunction hearing, and I consulted with him to some extent thereafter as we responded to written discovery. I had him review interrogatory answers, I had him help produce documents, and he was deposed by the opponents in the case.

I did not know at the time that Senator Ogg was charging Browning-Ferris a fee for his services. I did not know that for several years later. He did consult with me frequently during those months, and did consult with me to some extent for several years thereafter.

Senator SIMON. So that you were not aware of the fee he charged? No one in the firm asked you whether this was appropriate or not?

Mr. LAKE. The firm did not hire Senator Ogg. Senator Ogg apparently—this came out several years later in connection with another lawsuit in which Senator Ogg and Browning—Browning-Ferris was sued in connection with another landfill and Senator Ogg, I believe, was named, although it was a civil suit, an unindicted co-conspirator.

That is when I learned that there had been some fee arrangement, and those same facts, I believe, led up to the grand jury investigation, although my limited involvement with the grand jury was to provide them basically the information I've just provided you.

Senator SIMON. We thank you very, very much.

Mr. LAKE. I appreciate your time, Mr. Chairman.

[Written questions and answers for Mr. Lake follow:]

May 16, 1988

Honorable Strom Thurmond
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Senator Thurmond:

I appreciate the prompt and thorough response you and the other members of the Committee on the Judiciary have given to my nomination. I am enclosing answers to the questions I received from you after today's hearing. If you request any further information, I would be pleased to provide it.

Yours very truly,

Sim Lake

QUESTIONS FROM SENATOR THURMOND FOR SIMEON T. LAKE, OF TEXAS, TO BE UNITED STATES DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF TEXAS

1. MR. LAKE, HOW DOES A RESPONSIBLE JUDGE GO ABOUT THE PROCESS OF INTERPRETING SUCH SEEMINGLY OPEN-ENDED CONSTITUTIONAL PROVISIONS AS THE DUE PROCESS OR EQUAL PROTECTION CLAUSES?

ANSWER: A RESPONSIBLE JUDGE SHOULD FIRST LOOK TO THE LANGUAGE SELECTED BY THE FRAMERS, BOTH IN THE CLAUSES IN QUESTION AND ELSEWHERE IN THE CONSTITUTION, IN INTERPRETING PROVISIONS SUCH AS THE DUE PROCESS OR EQUAL PROTECTION CLAUSE. TO THE EXTENT THAT CONTEMPORANEOUS LEGISLATIVE SOURCES EXIST, THEY CAN ALSO BE USED AS AN AID TO INTERPRETATION. FINALLY, A RESPONSIBLE JUDGE MUST BE GUIDED BY PRECEDENT OF THE UNITED STATES SUPREME COURT AND THE APPROPRIATE COURT OF APPEALS.

2. MR. LAKE, ARTICLE III, SECTION 1 OF THE CONSTITUTION INVESTS IN THE CONGRESS PLENARY POWER TO "ORDAIN AND ESTABLISH" SUCH INFERIOR COURTS AS IT SEES FIT. TO WHAT EXTENT, AS A DIRECT FUNCTION OF THAT POWER, IS CONGRESS EQUALLY EMPOWERED TO LIMIT THE JURISDICTION OF LOWER FEDERAL COURTS OVER VARIOUS CLASSES OF CASES AND CONTROVERSIES?

ANSWER: IN CREATING INFERIOR COURTS, CONGRESS HAS THE POWER TO BOTH EXPAND AND CONTRACT THE JURISDICTION OF THOSE COURTS. FOR EXAMPLE, CONGRESS HAS FREQUENTLY LEGISLATED TO LIMIT THE

INJUNCTIVE POWER OF DISTRICT COURTS. WHEN IT CREATED THE COURTS OF APPEALS, CONGRESS LIMITED THEIR JURISDICTIONS TO APPEALS FROM FINAL DECISIONS OF THE DISTRICT COURTS. SIMILARLY, WHEN IT ENACTED THE ECONOMIC STABILIZATION ACT OF 1970, CONGRESS LIMITED THE POWER OF THE CIRCUIT COURTS OF APPEALS BY REQUIRING THAT ALL APPEALS FROM THE DISTRICT COURTS BE TO THE TEMPORARY EMERGENCY COURT OF APPEALS.

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May 20, 1988

Senator Paul Simon
United States Senate
Committee on the Judiciary
Washington, D.C. 20510-5275

Dear Senator Simon:

Enclosed are my written answers to the additional questions that accompanied your letter of May 18, 1988. I attest that these answers are given under the same oath that I swore at the Committee hearing on May 16, 1988.

I appreciate very much your prompt and thorough consideration of my nomination.

Very truly yours,

Sim Lake

SL/bma
Enclosures

40780

ADDITIONAL QUESTIONS FOR SIMEON T. LAKE, III

1. Several years ago, you represented the defendants in a civil rights suit that was brought against Browning-Ferris Industries and the Texas Department of Health for the siting of a waste disposal site in a predominantly black community. At one point during the case, the lawyer for the plaintiffs asked the court for an order restraining you as well as your client from harassing the plaintiffs and their counsel. She produced evidence that your client had paid two people to infiltrate the plaintiffs' group and sow seeds of discord within the group. When did you first become aware of the activities of these two people and what actions did you take after you became so aware?

ANSWER: I am not aware of any evidence produced by opposing counsel in the case of Margaret Bean v. Southwestern Waste Management Corp, et al., Civil Action No. H-79-2215, in the United States District Court for the Southern District of Texas, Houston Division, that my client Browning-Ferris Industries, Inc. paid people to infiltrate the plaintiffs' group and sow seeds of discord within the group.

I was generally aware from the beginning of my representation of BFI in late 1979 that BFI had undertaken a community relations effort in the area surrounding the proposed landfill site to familiarize residents with the attributes of a properly designed, constructed and operated sanitary landfill. It is a normal practice for BFI to conduct community relations activities in areas in which it operates landfills. There was at that time and may still be a tendency by some people to confuse this type of landfill with the former open dumps, which operated for many years before public regulation of landfills.

I was retained by BFI to defend the lawsuit filed against it and did not become familiar with the details of the community relations activities until October of 1981 when opposing counsel filed a Motion for Temporary Restraining Order and Preliminary Injunction. From reviewing the material made available to me at that time and discussing the matter with my client it remained my understanding that BFI's efforts were in acquainting local residents, and in particular local community leaders, with the facts concerning the operation of the landfillS, and in participating in local community activities. The plaintiffs in the lawsuit were only a small percentage of the area residents who lived near the landfill.

At no time did I become aware of any facts indicating that my client was attempting to infiltrate the group of plaintiffs in the case or to communicate directly with them instead of through their counsel. Had I become aware that my client was in any way contacting the plaintiffs directly, I would have cautioned my client that any contacts with the plaintiffs must be through counsel.

2. The plaintiffs' counsel in that case also charged that you leaked a confidential settlement proposal to a City Councilman, who then proceeded to disclose it on a popular radio station. When you disclosed the proposal to the City Councilman, did you consider it a public non-confidential proposal? If so, what led you to think that the settlement proposal, unlike most settlement proposals discussed between counsel was not confidential? If you believed the settlement proposal was confidential, did you so apprise the City Councilman when he told you that he was planning to discuss the case on a radio program?

ANSWER: There was no leak of confidential information by me in this case or any attempt by me to try this case through the media.

This case was the subject of considerable media attention during the preliminary injunction hearing in November and December of 1979. After the Court denied the plaintiffs' Motion for Preliminary Injunction in December of 1979, it became apparent that the suit would not be resolved through judicial action for some time. The Mayor of Houston appointed a three-member committee of City Council members to monitor the status of the lawsuit and see if the committee could facilitate a settlement among the parties. The City's interest in the lawsuit stemmed from the fact that the City then, as now, does not operate municipal landfills; its municipal waste is disposed of at privately owned landfills, including those owned and operated by BFI. The City was reluctant to use the Whispering

Pines Landfill, and was interested in attempting to facilitate a settlement, because of the media attention the landfill had received.

Councilman Ernest McGowen, who represented the City Council district nearest the landfill, was a member of the committee appointed by the Mayor. Both opposing counsel and I met with the committee shortly after it was formed. Councilman McGowen also met privately with plaintiffs' counsel on subsequent occasions.

In October of 1981, Councilman McGowen contacted my client and asked if I would meet with him to bring him up to date on the status of the lawsuit, including settlement negotiations. During the meeting Councilman McGowen asked about the status of settlement negotiations, and I informed him of the plaintiffs' current settlement demand and told him that I viewed it unlikely that my client would accept it. In my experience as a litigator settlement demands by opposing counsel are not considered to be confidential. Lawyers on both sides of the docket frequently discuss with other lawyers settlement strategy of their opponents, including particular settlement demands or offers. I particularly did not consider the plaintiffs' settlement demand in this case to be confidential from a

City Councilman who had been specifically designated by the Mayor to monitor the status of the lawsuit and who had previously met with me and plaintiffs' counsel to discuss settlement. I did not then and do not now see any impropriety in my discussion of plaintiffs' settlement demand with Councilman McGowen.

Finally, only during the course of preparing to respond to plaintiffs' 1981 Motion for Temporary Restraining Order and Preliminary Injunction did I learn for the first time that plaintiffs' counsel had repeatedly appeared on local radio and television stations in 1980 and 1981 to voice opposition to the landfill and discuss the lawsuit and other efforts to prevent the landfill from becoming operational. I engaged in no such conduct, and the Court denied the plaintiffs' Motion for Temporary Restraining Order and Preliminary Injunction.

3. Shortly after your client, Browning-Ferris, acquired the landfill site at issue in the civil rights case, another company, Conservation Management Inc. (CMI), sought to obtain a permit from the Texas Department of Health to develop a competing landfill site. According to a report in the Houston Chronicle (Feb. 8, 1984), Browning-Ferris made "secret payments" to one of your partners to hire witnesses to oppose CMI's permit. Were you involved at all in opposing CMI's permit, and if so, what did you know about a "secret slush fund" used to hire witnesses to oppose the permit?

ANSWER: I was not aware of any "secret slush fund" or any payments, whether secret or otherwise, made to my law partner to hire witnesses to oppose the permit. I was not involved at all in opposing CMI's permit.

4. In your testimony before the Committee, you stated that you have on a number of occasions during your career provided legal advice without compensation. Would you please provide to the Committee a description of the matters upon which you provided advice without compensation including the approximate date or dates the advice was provided, the amount of time you devoted to the matter, and a brief description of the issue involved. In addition, you stated that you at one time represented a black church in litigation. Would you please provide the Committee with the details of that representation? Did you receive a fee for the representation?

ANSWER: As I stated in my answers to the Committee's Questionnaire, my primary non-compensatory legal activities in recent years have involved training of new lawyers at Fulbright & Jaworski and serving on the Editorial Board of The Houston Lawyer. In addition, as I advised the Committee at the May 16 hearing, over the years I represented a number of people without compensation.

In the spring of 1971 I was assigned to the Office of Staff Judge Advocate of the 23rd Infantry Division in the Republic of Vietnam to act as a prosecuting attorney. Since I was not a member of the Judge Advocate General's Corps, I was not assigned to represent defendants. During my tenure at Chu Lai, Vietnam, an enlisted man in the Air Calvary Division asked that I represent him in addition to his assigned counsel in defending charges brought against him in a special court-martial. The soldier in question, whose name I do not remember, was black, and perceived that the charges against him may have been racially motivated. I along with his assigned counsel tried the case, and I believe that he was acquitted of all charges.

The other pro bono work I referred to in my testimony involved providing legal services to various people while I worked at Fulbright & Jaworski. In reviewing my files I have identified seven specific instances of such work, in addition to the two indigent criminal cases described in my answers to the Committee's Questionnaire, and there may have been others on which I did not open a file. These matters varied in the type and amount of work involved and included counseling, writing letters, performing legal research, and meeting with third parties to investigate or resolve disputes. The types of matters included negotiating a recision of an overreaching health spa contract, contesting excessive utility charges, assisting in pursuing insurance claims, and investigating the death of a client's child for possible medical malpractice.

The additional specific instance I referred to in my testimony involved the representation of the Mount

Pilgrim Baptist Church and several individual members of the Board of Deacons from 1974 through 1977 in a lawsuit styled George Nash, et al. v. Essie Harris, et al., Cause No. 1,019,750, in the 165th Judicial District Court of Harris County, Texas. The suit involved the right to money received by the church as proceeds for land condemned by the City of Houston, the right of the church to sell pews, musical instruments and other personal property, and the right of the church to sell additional real property to another church. A judgment was ultimately entered in favor of my clients ordering that they recover fee simple title to the property, together with all improvements thereon and that the Mount Pilgrim Baptist Church be declared successor-in-interest to the original grantee of the property in question.

I prepared and filed an Original and Amended Answer, a Motion to Show Authority and Motion for Production and Inspection, a Motion to Quash Interrogatories and for Protection, prepared and presented two witnesses for deposition, reviewed documents, researched the law, prepared a Trial Memorandum and a Reply Memorandum, had a number of conferences with the deacons of the church, tried the case, prepared the judgment, and assisted the church with the sale of its property.

Before the hearing on May 16 I checked with the firm's Accounting Department and was advised that no bill was ever sent to our clients in this matter. Since the hearing I have obtained and reviewed the entire file in connection with responding to Senator Simon's May 18 letter. I have now determined that after the church property was sold, a bill was sent in August of 1977 for $2,500 plus $29.45 in disbursements, which was paid. This fee was substantially less than the firm would have charged to other clients. The firm's records reflect that the firm devoted 76 hours to this matter, of which 49.50 hours represented my time. I apologize to the Committee for this inadvertent error in my earlier testimony and ask that this answer be placed in the record to correct my testimony.

5. In response to a question in the Committee's questionnaire, you stated that you would recuse yourself as a judge from hearing cases handled by your current law firm, provided that the case commenced while you were still at the firm. Does that mean that if, in your first month or year as a judge, you were assigned a case in which one of your former partners was involved, you would hear the case so long as the case had not come to the firm before you left? Do you think there would be an appearance of impropriety in your presiding over a case handled by one of your former partners so soon after leaving the partnership?

ANSWER: After completing the Committee's Questionnaire, I discussed this matter with present and former judges of the Southern District of Texas to determine if there were any policy in addition to Canon 3.C of the Code of Judicial Conduct governing this question. I was informed that it was generally considered advisable for a new judge to recuse himself in all cases involving his former law firm for some specific period of time, which was variously recommended to be two or four years. I have determined to take the most conservative approach and will recuse myself for a period of four years from all cases in which Fulbright & Jaworski represents any of the parties.

JOSEPH R. BIDEN, Jr., DELAWARE, CHAIRMAN
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DENNIS W. SHEDD, MINORITY CHIEF COUNSEL

United States Senate
COMMITTEE ON THE JUDICIARY
WASHINGTON, DC 20510-6275

June 8, 1988

Simeon T. Lake III, Esq.
Fulbright & Jaworski
1301 McKinney Street
Houston, TX 77010

Dear Mr. Lake:

On May 20, 1988, you responded to several written questions I had forwarded to you on May 18, 1988 on behalf of the Committee. Based upon a review of your responses and additional information that has been brought to the Committee's attention since that time, I am forwarding several additional questions to which the Committee would appreciate your response.

Your answers should be accompanied by your attestation of their accuracy. Please deliver your answers to the Judiciary Committee in Room SD-224, Dirksen Senate Office Building, Washington, DC 20510. Any questions concerning this request should be directed to Andrew Rainer, Investigative Counsel to the Committee, at (202) 224-8191.

Thank you for your continued cooperation with the Committee in its consideration of your nomination.

Sincerely,

Paul Simon
United States Senator

FURTHER QUESTIONS FOR SIMEON T. LAKE, III

1. In response to Question 1 of May 18, 1988, concerning the case of *Bean v. Southwestern Waste Management Corp. et al.*, you stated that you were aware that your client, Browning-Ferris Industries, Inc., undertook a "community relations" effort in the area surrounding the proposed landfill site to familiarize residents with facts about the landfill. You further stated that "[t]he plaintiffs in the lawsuit were only a small percentage of the area residents who lived near the landfill" and that you do not believe your client "was attempting to infiltrate the group of plaintiffs in the case or to communicate directly with them instead of through their counsel."

At the time this "community relations" effort was going on, there was a motion pending in the case to certify as a class all the residents of the subdivision adjacent to the landfill site. What consideration did you give to the propriety of your client's contacting members of the proposed class (which was later certified)? What steps did you take to ensure that the individuals who were being contacted as part of BFI's "community relations" effort (who were identified by name in documents filed with the court) were not plaintiffs in the suit you were defending? Were you aware that the individuals who were being paid to conduct the "community relations" effort for BFI actually met with named plaintiffs in the suit, without their attorney present, to urge them to abandon the suit? In responding to this question (or any of the following questions), you may omit any information subject to an attorney-client privilege, unless such privilege has been waived.

2. In response to Question 2 of May 18, 1988, concerning your provision of information to a City Councilman about a settlement proposal in the *Bean* case, you stated, "In my experience as a litigator settlement demands by opposing counsel are not considered to be confidential." Have there been other cases in which you have discussed settlement proposals from opposing counsel with nonparties to the case? If so, please briefly describe the circumstances of each such instance. Were there any facts in the *Bean* case that suggested to you that the proposal might *not* be intended for public dissemination? For instance, did you discuss with the plaintiff's counsel whether her clients had fully consented to the proposal and whether they wished the proposal to be treated in confidence?

3. In your response to the Committee's standard questionnaire, you noted that you had represented Browning-Ferris Industries in 14 lawsuits filed by residents of

East Texas seeking damages because of BFI's alleged use of hazardous waste materials in surfacing rural roads in that part of the state. You indicated that all of these cases were ultimately settled without trial. It has been reported to the Committee that, in the last of these settlements, you requested that opposing counsel destroy all the scientific evidence that had been compiled of damage caused by the dissemination of the hazardous wastes involved, and that the evidence was in fact burned. Is this report accurate? If so, can you explain why you asked that this information be destroyed? In your experience, is it a normal practice to condition settlement of a case on destruction of evidence? Also, if the evidence was destroyed, what consideration was given to the public interest in the evidence, in light of the fact that the incidents involved had been the subject of lengthy hearings by a Congressional committee?

4. In response to Question 4 of May 18, 1988, you identified the instances in which you have provided legal advice without compensation during the 19 years you have been a member of the bar. You identified those instances as assistance on briefs for two indigent criminal defendants during your first year as a lawyer, representation of a black criminal defendant in Vietnam during your second year as a lawyer, and "seven specific instances" which you described as including "negotiating a recission of an overreaching health spa contract, contesting excessive utility charges, assisting in pursuing insurance claims, and investigating the death of a client's child for possible medical malpractice." With respect to these seven instances, could you please indicate the approximate date the advice was provided and the amount of time you devoted to each matter, as originally requested in Question 4, as well as whether you received a fee in any of those instances?

5. In response to the Committee's standard questionnaire, you indicated that you served as a prosecuting attorney for the U.S. Army for a number of months in 1971. Have you handled any criminal cases since that time? If so, please indicate the date or dates the representation occurred, the amount of time you devoted to each matter, and a brief description of the issue involved.

6. According to your response to the Committee's standard questionnaire, the bulk of your practice has entailed representation of large corporate clients, often as defendants in lawsuits. Aside from the matters discussed in response to Question 4 above, have you handled any cases in which you represented individuals or small businesses? If so, please give specific examples. In your view, what aspects of your experience as a lawyer best demonstrate that, if confirmed, you would be equally open as a judge to the claims of individuals

or small businesses as you would be to the claims of large corporations?

7. At the hearing on your nomination on May 16, 1988, you were asked about your consultation with State Senator Jack Ogg in connection with the defense of the Bean case. You indicated you consulted with Senator Ogg on several occasions because of his familiarity with the process by which a permit had been obtained to construct the landfill at issue in the case, and that you did not know Senator Ogg was being paid for the time he spent consulting with you. Do you have any records of the dates and amount of time you spent consulting with Senator Ogg? If so, please provide them to the Committee. Also, at the time you consulted with Senator Ogg, were you aware of allegations that he had received improper payments from or exerted improper influence on behalf of your client, Browning-Ferris Industries? If so, what considerations went into your decision to consult with Senator Ogg in the Bean case?

FULBRIGHT & JAWORSKI

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Houston, Texas 77010

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Houston
Washington, D.C.
Austin
San Antonio
Dallas
London
Zurich

June 9, 1988

VIA FEDERAL EXPRESS

Senator Paul Simon
United States Senate
Committee on the Judiciary
Dirksen Senate Office Building
Room SD-224
Washington, D.C. 20510-6275

ATTENTION: Andrew Rainer, SD-212

Dear Senator Simon:

Enclosed are my written answers to the additional questions that accompanied your letter of June 8, 1988. I attest that these answers are given under the same oath that I swore at the Committee hearing on May 16, 1988.

I appreciate very much your prompt and thorough consideration of my nomination.

Very truly yours,

Sim Lake

SL/bma
Enclosures

FURTHER QUESTIONS FOR SIMEON T. LAKE, III

1. In response to Question 1 of May 18, 1988, concerning the case of Bean v. Southwestern Waste Management Corp., et al., you stated that you were aware that your client, Browning-Ferris Industries, Inc., undertook a "community relations" effort in the area surrounding the proposed landfill site to familiarize residents with facts about the landfill. You further stated that "[t]he plaintiffs in the lawsuit were only a small percentage of the area residents who lived near the landfill" and that you do not believe your client "was attempting to infiltrate the group of plaintiffs in the case or to communicate directly with them instead of through their counsel."

At the time this "community relations" effort was going on, there was a motion pending in the case to certify as a class all the residents of the subdivision adjacent to the landfill site. What consideration did you give to the propriety of your client's contacting members of the proposed class (which was later certified)? What steps did you take to ensure that the individuals who were being contacted as part of BFI's "community relations" effort (who were identified by name in documents filed with the court) were not plaintiffs in the suit you were defending? Were you aware that the individuals who were being paid to conduct the "community relations" effort for BFI actually met with named plaintiffs in the suit, without their attorney present, to urge them to abandon the suit? In responding to this question (or any of the following questions), you may omit any information subject to an attorney-client privilege, unless such privilege has been waived.

Answer to Question No. 1:

It was my understanding that my client's community relations effort involved identifying community leaders and familiarizing them and other residents with the attributes of a properly run landfill. I did not know the details of these efforts until October of 1981 when opposing counsel filed a motion for temporary restraining order and preliminary injunction. As I stated in my May 18th answer (on p. 1, ¶ 2), it remained my understanding that BFI's efforts were to identify local community leaders and acquaint them with the landfill and the facts concerning a properly run landfill and to participate in community activities. I did not understand that these community relations activities would directly involve any of the named plaintiffs, but that they would be directed to local community leaders.

I respectfully wish to correct one statement in the Committee's question. Although the suit was filed as a class action, a motion for class certification was not filed until August of 1981, after BFI's community relations efforts described in plaintiffs' motion for temporary restraining order and preliminary injunction. Although the certification of a class (which occurred in July of 1984) would preclude discussions by me, as counsel, with class members, it is not my understanding that communications by a client to community leaders, who could possibly be included within some class that might later be certified, would be inappropriate.

I was not aware then, nor am I aware now, that the individuals who were being paid to conduct this community relations effort for BFI actually met with the named plaintiffs in the suit without their attorney present to urge them to abandon the suit. Had I been aware that such activities occurred, I would have strongly admonished BFI that such activities should cease forthwith and would have informed plaintiffs' counsel about them.

2. In response to Question 2 of May 18, 1988, concerning your provision of information to a City Councilman about a settlement proposal in the Bean case, you stated, "In my experience as a litigator settlement demands by opposing counsel are not considered to be confidential." Have there been other cases in which you have discussed settlement proposals from opposing counsel with nonparties to the case? If so, please briefly describe the circumstances of each such instance. Were there any facts in the Bean case that suggested to you that the proposal might not be intended for public dissemination? For instance, did you discuss with the plaintiff's counsel whether her clients had fully consented to the proposal and whether they wished the proposal to be treated in confidence?

Answer to Question No. 2:

In my answer to Question 2 of your May 18, 1988, letter (at p. 4, ¶ 3), I stated:

> "In my experience as a litigator settlement demands by opposing counsel are not considered to be confidential. Lawyers on both sides of the docket frequently discuss with other lawyers settlement strategy of their opponents, including particular settlement demands or offers. I particularly did not consider the plaintiffs' settlement demand in this case to be confidential from a city councilman who had been specifically designated by the Mayor to monitor the status of the lawsuit and who had previously met with me and plaintiffs' counsel to discuss settlement."

From my experience the discussion of opposing counsel's settlement demands occurs most frequently among counsel representing different parties aligned on the same side of a lawsuit, or parties with the same interests in similar cases. In defending clients in lawsuits, I and counsel for other defendants frequently discuss plaintiffs' settlement demands to our respective clients, our offers, and changes in the plaintiffs' demands in order to gauge the plaintiff's true settlement position in the case. For example, in representing several defendants in a recent multi-party case, David M. Cummings, Jr. v. Texaco Inc., Civil Action No. B-85-747-CA, a number of defense counsel communicated and discussed among themselves the plaintiffs' settlement demands as well as their own responses to those demands. Likewise, in instances where my client is engaged in litigation against a particular opponent similar to that being conducted by another lawyer in another case, lawyers aligned in the different cases against a common opponent will frequently discuss that opponent's settlement position, including particular demands or offers.

The facts known to me in the Bean case did not indicate that this particular settlement demand was not to be disclosed to persons who had a legitimate interest in inquiring about it. When the demand was given to me by plaintiffs' counsel I do not recall any request that it be kept confidential or treated differently than any other settlement proposal, and the demand itself does not state that it is confidential. I did not discuss with plaintiffs' counsel whether she had fully apprised all her clients of the terms of the settlement demand. I assumed that she had discussed it with her clients and that they had authorized it since I assumed the demand was being made in good faith and that if it were accepted in full or material part by my client, opposing counsel had the authority to consummate a settlement on such terms.

I wish to reiterate that neither I nor my client went out and publicized this demand. Councilman McGowen requested that I meet and inform him of the status of the lawsuit, and I did so. During the meeting, which lasted over an hour, Councilman McGowen asked about a number of aspects of the case. Toward the end of the meeting, he asked about settlement discussions. I assumed that an elected city official, designated by the Mayor to monitor the status of the lawsuit and facilitate a settlement, had a legitimate interest in inquiring as to the matters he asked me about.

3. In your response to the Committee's standard questionnaire, you noted that you had represented Browning-Ferris Industries in 14 lawsuits filed by residents of East Texas seeking damages because of BFI's alleged use of hazardous waste materials in surfacing rural roads in that part of the state. You indicated that all of these cases were ultimately settled without trial. It has been reported to the Committee that, in the last of these settlements, you requested that opposing counsel destroy all the scientific evidence that had been compiled of damage caused by the dissemination of the hazardous wastes involved, and that the evidence was in fact burned. Is this report accurate? If so, can you explain why you asked that this information be destroyed? In your experience, is it a normal practice to condition settlement of a case on destruction of evidence? Also, if the evidence was destroyed, what consideration was given to the public interest in the evidence, in light of the fact that the incidents involved had been the subject of lengthy hearings by a Congressional committee?

Answer to Question No. 3:

In complex litigation involving discovery into sensitive matters the parties frequently agree that the discovery will be maintained in confidence and that at the end of the case materials obtained from the opposition will either be returned or destroyed. Likewise, settlement agreements in these cases often include a provision that opposing counsel's work product will be maintained in confidence or destroyed. The reason for these agreements is that a litigant settling a major lawsuit does not want his opponent's work product to be used as a road map for opponents in subsequent lawsuits arising out of the same factual setting.

At the conclusion of the last of the 14 cases described, I asked opposing counsel to return to me all of the investigation and discovery conducted by him in the case. The principle factor in evaluating this case for settlement was the very thorough discovery and investigation conducted by opposing counsel. There had been a number of other plaintiffs with similar claims, and the potential existed for future litigation. I was concerned that the work product of the attorney with whom I was settling not be used to develop additional cases against my client.

As an incentive to my client to settle these cases, opposing counsel offered to agree not to handle any other cases of this nature. As a part of the settlement, opposing counsel agreed to return to me all of the discovery materials in the case but requested that he be allowed to keep copies of medical information relating to his clients and that certain investigation conducted by him not be returned to me so that the identities of his sources would not be known to me. Plaintiffs' counsel determined which information fell into which category, and the confidential information he did not wish to furnish to me was destroyed, as were his copies of the discovery conducted against my client. I am unsure what "scientific evidence" the Committee is referring to, other than plaintiffs' medical reports, of which I and opposing counsel have copies.

The public interest favors out-of-court settlement of contested matters, and my client paid a substantial amount of money to settle this and similar cases. At the time of this settlement in 1985 there was no on-going investigation regarding the matters at issue in the lawsuit. An earlier investigation had been conducted and a report issued in 1979. To my knowledge that was the end of the investigation. Furthermore, I have maintained all of my files in connection with this case, including my copies of all discovery conducted in the case, and my client has maintained all of its files and documents relative to the case. Neither I nor my client has done anything that would thwart legitimate discovery into my client's conduct by any public body, nor would I or my client do so.

4. In response to Question 4 of May 18, 1988, you identified the instances in which you have provided legal advice without compensation during the 19 years you have been a member of the bar. You identified those instances as assistance on briefs for two indigent criminal defendants during your first year as a lawyer, representation of a black criminal defendant in Vietnam during your second year as a lawyer, and "seven specific instances" which you described as including "negotiating a recission of an overreaching health spa contract, contesting excessive utility charges, assisting in pursuing insurance claims, and investigating the death of a client's child for possible medical malpractice." With respect to these seven instances, could you please indicate the approximate date the advice was provided and the amount of time you devoted to each matter, as originally requested in Question 4, as well as whether you received a fee in any of those instances?

Answer to No. 4:

As I stated in my response to Question 4 of May 18, 1988 (p. 7, ¶ 1), my primary outside, non-compensatory legal activities have involved serving on the Editorial Board of The Houston Lawyer. The seven specific instances I referred to involved work in which I actually opened and kept a file. There probably were other occasions in which I gave pro bono advice of a routine matter for which I have no record. The approximate dates of these seven instances and the approximate amount of time provided are as follows:

(1) 1969 - meeting with client, legal research, negotiating a recision of overreaching health spa contract - 8 hours;

(2) 1976 - correspondence to assist in collection of debt, counseling and correspondence regarding debt collection matter - 3 hours;

(3) 1976 - counseling and assistance on insurance claim - 2 hours;

(4) 1978 and 1979 - counseling with client, review of information concerning accident, review of information concerning damages, correspondence with defendant's insurance carrier re claim - 10 hours;

(5) 1979 - counseling with client on defense of lawsuit and correspondence to opposing counsel - 1 hour;

(6) 1982 - conferences with client, legal research, correspondence and negotiations with public utility over charges - 6 hours; and

(7) 1986 - counseling with client and family regarding death of family member, obtain and review medical records, conference and meeting with physician, meetings with family at hospital, correspondence, discussion with other counsel regarding possible medical malpractice claim - 20 hours.

No fee was charged for any of these services. Therefore, I did not keep time records in connection with these matters, and the time figures listed above are only rough approximations.

5. In response to the Committee's standard questionnaire, you indicated that you served as a prosecuting attorney for the U.S. Army for a number of months in 1971. Have you handled any criminal cases since that time? If so, please indicate the date or dates the representation occurred, the amount of time you devoted to each matter, and a brief description of the issue involved.

Answer to Question 5:

I have not handled any criminal cases since 1971. However, since my nomination I have read a number of materials, including those of the Federal Judicial Center dealing with criminal matters and the U.S. Sentencing Commission Guidelines Manual, to update my knowledge of criminal law.

6. According to your response to the Committee's standard questionnaire, the bulk of your practice has entailed representation of large corporate clients, often as defendants in lawsuits. Aside from the matters discussed in response to Question 4 above, have you handled any cases in which you represented individuals or small businesses? If so, please give specific examples. In your view, what aspects of your experience as a lawyer best demonstrate that, if confirmed, you would be equally open as a judge to the claims of individuals or small businesses as you would be to the claims of large corporations?

Answer to Question 6:

The career path at a law firm usually results in lawyers handling matters of increasing complexity and value as they progress. Most such litigation is for large corporate clients, rather than individuals or small businesses. However, during my practice I have represented a number of individuals and small businesses. In addition to George Nash v. Essie Harris, which is discussed in my May 18 answers (at p. 9), other specific examples of cases that I tried are:

(1) Farber v. Lyles, Cause No. 726,359 in the 152nd Judicial District Court of Harris County, Texas. I successfully defended a small swimming pool contractor in a breach of construction case.

(2) Majestic Uniform and Tile Co., Inc. v. Mel Croan Volkswagen, Inc., Cause No. 874,472 in the 61st District Court of Harris County, Texas. I defended a car dealer in a suit alleging breach of a uniform supply contract. My client lost in the trial court and appealed the case to the court of civil appeals at Houston, which reversed and remanded for a new trial. The case was later settled.

(3) J. C. Goodson, et al. v. James H. Quarrels, et al., Cause No. 865598 in the 152nd District Court of Harris County, Texas. I represented Mr. & Mrs. J. C. Goodson in a suit brought against Mr. James H. Quarrels to remove a cloud on title to real property they owned. My clients were successful in the trial court, court of appeals and the Supreme Court of Texas and, ultimately, in the U.S. Supreme Court, which denied the defendant's appeal.

(4) Able Service, Inc. v. Contract Maintenance Co., Cause No. 987,190 in the 190th District Court of Harris County, Texas. I defended a private company in a breach of construction contract case. My client lost and paid the judgment.

(5) Stoner v. Thompson, Cause No. 1,091,360 in the 61st District Court of Harris County, Texas. I represented two individual business people in defense of a suit for interference with a contract and for declaratory judgment. My clients were successful in the trial court, court of civil appeals and Texas Supreme Court.

(6) Robindale Civic Club v. W. W. Whittaker, Cause No. 1,017,378 in the 80th District Court of Harris County, Texas. I represented a neighborhood civic club in a suit to enjoin violation of deed restrictions. The case was tried before the court and my client obtained a permanent injunction against the defendant.

In each of these cases I was retained by a small company or individual and paid by that company or individual. I have also been retained by other individuals and small companies in suits that were settled prior to trial. In addition, I have represented many other individuals and small companies in suits in which my client's defense was paid for by his insurance carrier. In fact, much of my early practice involved defending individuals and small companies involved in car wrecks and other tort suits.

In my opinion, the economic status of a litigant has no effect on the merit of his claim. I have represented individuals and companies of various sizes on both sides of the docket in a variety of litigation over the years. I have endeavored to do the best for my clients regardless of their economic status. My father is himself a small businessman and both from personal experience and my practice, I can empathize with the claims of individuals and small businessmen as well as corporations. If confirmed, I will weigh each case on its merits and give no consideration to the size or status of the parties.

7. At the hearing on your nomination on May 16, 1988, you were asked about your consultation with State Senator Jack Ogg in connection with the defense of the Bean case. You indicated you consulted with Senator Ogg on several occasions because of his familiarity with the process by which a permit had been obtained to construct the landfill at issue in the case, and that you did not know Senator Ogg was being paid for the time he spent consulting with you. Do you have any records of the dates and amount of time you spent consulting with Senator Ogg? If so, please provide them to the Committee. Also, at the time you consulted with Senator Ogg, were you aware of allegations that he had received improper payments from or exerted improper influence on behalf of your client, Browning-Ferris Industries? If so, what considerations went into your decision to consult with Senator Ogg in the Bean case?

Answer to Question No. 7:

When I first consulted with Senator Ogg in 1979, I was not aware of any allegations that he had received improper payments from or exerted improper influence on behalf of BFI. In fact, these allegations were not made until two years later in 1981. My consultations with Senator Ogg were in connection with acquiring facts to defend Southwestern Waste Management Corp. (SWM) in a preliminary injunction hearing in November and December 1979. BFI had recently acquired SWM, and Senator Ogg had been a shareholder of the company and a lawyer for it.

Following the preliminary injunction hearing, I consulted with Senator Ogg and other former shareholders of SWM in May of 1980 in connection with answers to interrogatories propounded to SWM. In July of 1980 I again discussed the status of the case with him. In December of 1980, Senator Ogg was deposed in the Bean case, and I talked and met with him several times about the facts of that suit. In July of 1981 after the CMI suit was filed, I asked Senator Ogg and other attorneys in my firm to inform me of the facts involved in that suit so that I could determine that it had no relationship to the Bean case. In December of 1982 and January of 1983 I again talked to Senator Ogg in connection with his second deposition in the Bean case. I also consulted with him in July of 1983 and July of 1984 in connection with preparing for trial.

The only records I have regarding my discussions with Senator Ogg are my personal time records which note conferences and meetings with him. These are handwritten internal records prepared for use only by me and my secretary for billing purposes. They are not intended for dissemination to clients, much less the public, and are thus not very neat or legible. However, pursuant to the Committee's request, copies of the portions of these records that are responsive to this inquiry are attached. I do not always identify each person with whom I talk in my time records, especially if I talk with a number of people. I have no doubt that although my time records do not reflect it, I consulted with Senator Ogg frequently in November and December of 1979.

At the time of my initial discussions in connection with the preliminary injunction and in responding to discovery, I had no knowledge of any relationship between Senator Ogg and BFI in connection with the CMI permit application. I first learned of that relationship when suit was filed by CMI in July of 1981. By that time, Senator Ogg was already involved in the Bean case as a fact witness. The furnishing of information by Senator Ogg to me in connection with my defense of the Bean case had nothing to do with his alleged involvement with the CMI matter, and as I have previously stated, I did not represent BFI at any time in connection with the CMI matter.

NOVEMBER 2 FRIDAY

1979 306th day - 59 days fo

All Souls Day

BFI/Bean –

review π^s pltf complaint & affidavit,
work on answer of Δ^s & memo of law in
support of motion to dismiss, numerous
confs w/ asst. atty gen., city atty,
court clerk, client, ~~[illegible]~~ &
w/ other atty re trial preparation,
review Tex Dept of Health record

7.25

MAY **19** MONDAY 1980 140th day - 226 days follow

Beg – revise answer to π's interrogs, conf w/
Lowther re same, meet w/ Ozzy Sewell, &
Walker to revise answer to Stahl interrogs to Suh 3.50

JULY **16** WEDNESDAY

1980 198th day - 168 d

Bernacon attended conf w/ JACK OGG re status of case + further handling [redacted] .75

days follow
...

1980 343rd day - 23 days follow
Feast of the Immaculate Conception

MONDAY **8** DECEMBER

Bean — review notice of intent to depose Ogg
+ Walker; conf/tel chat re same, w/ Ogg re same .50

[redacted] DECEMBER 23 TUESDAY 1980 358th day · [redacted]

[redacted] Bean cooper/Aggo Walker re pre-depo | meeting [redacted]

1980 362nd day - 4 days follow

DECEMBER 27 SATURDAY

Berg

pre-depo conf w/ Ogg + Walker 3.0

DECEMBER 29 MONDAY

1980 364th day - 2 days follow

BFI/Bean - attend depos of Jack Ogg + 6.0
William Waller, confr w/ client re same
conf w/ Ogg re same

follow

1981 189th day - 176 days follow

WEDNESDAY 8 JULY

25

Bess conf w/ atty + Ogg re CMI suit 4.0

50

75

50

50

5

1982 349th day—16 days follow

WEDNESDAY 15 DECEMBER

Bus

conf/w Jack Ogg re mobility ; Operat. (.25)

[redacted]

1983 5th day—360 days follow

WEDNESDAY 5 JANUARY

Bean prepare for & attend appointment and deposition of Jack Ogg 3.0

1983 186th day—179 days follow

JULY 5 TUESDAY

Bean work on trial exhibits, trial preparation,
copy of Opp, etc

5.0

[redacted]

1983 189th day—176 days follow

FRIDAY 8 JULY

__Bean__

Conf/Ogg, Hoover

re status of case + trial preparation, work on trial exhibits (1.75)

1984 201st day–165 days follow

THURSDAY **19** JULY

793451

Bean trial-total preparation including
preparation of questions to Jack Ogg

675

Senator SIMON. Judge Schell.

Mr. LAKE. May I and my family be excused, Mr. Chairman?

Senator SIMON. You may, Mr. Lake.

Everything I hear about you, Judge Schell, including information from my friend, Ralph Hall, is very good. The only question that was raised by someone was your lack of litigation experience. Do you wish to comment on that?

TESTIMONY OF HON. RICHARD A. SCHELL, PLANO, TX, TO BE U.S. DISTRICT JUDGE FOR THE EASTERN DISTRICT OF TEXAS

Judge SCHELL. All right, sir. As far as making the transition to a Federal district court, I'd like to point out that while I was in private practice, although most of my private practice was an office practice, the types of cases I worked on involved mostly Federal questions.

I became fairly familiar with the Federal Rules of Procedure. I know I would have to refresh my memory on those. Many of the cases that we had in our office that I worked on were ongoing cases that lasted several years.

In addition, I have had litigation experience, of course, as a criminal prosecutor. I think my 6½ years as a State district judge and a county court at law judge will help me in that transition, if the committee should see fit to confirm me.

I have tried between 150 and 200 jury trials as a trial judge in the State system in Texas. I think that experience will be a big help to me on the Federal bench.

Senator SIMON. As I understand it, you had about 6 years of law practice before you became a State judge, is that correct?

Judge SCHELL. Yes, sir; 5 years, I believe it was.

Senator SIMON. And did you have much trial work experience before the Federal courts at all during that period?

Judge SCHELL. No, sir. Most of the cases I did work on involved Federal questions. Some were pending in Federal courts, some weren't. I didn't have any trial experience. I attended settlement conferences, I prepared pleadings, I engaged in discovery responses, meeting with clients and opposing counsel, and so forth.

But during that time the cases we had—some of them were not tried until years after I left the firm.

Senator SIMON. Federal sentencing guidelines went into effect in November. They have been somewhat controversial. Have you had a chance to look at those, and do you have any feeling on those guidelines?

Judge SCHELL. Okay. I just received those in the mail right before I came up here. I did glance through them. I haven't read the entire ring binder that contains them. I would say that I think any system that to some extent narrows the range of punishment for different offenses will assist in meeting the goal of deterrence of crime.

I think the goals of the sentencing guidelines, as you well know, are to put some uniformity into the sentencing of criminal offenders who have been found guilty and, in addition, to retain some proportionality to make the sentence fit the crime.

Those are two goals that sometimes can conflict and are hard to reconcile at times. You want to treat similar cases similarly; at the same time, retain the flexibility to adjust the punishments to the particular offender you have before you, depending on the criminal history of that person and the aggravating circumstances or lack of circumstances in the particular case.

I think the sentencing guidelines will be a big help in deterrence, though, because those who break our criminal laws will know that this is what they can expect. And I think it will also help to alleviate some of the cynicism that the public in general may have when they read that, for example, one murderer gets life in prison and another gets 10 years' probation.

That is all because of the different circumstances of a particular case and the differences in juries. Of course, in Federal court all the sentencing is done by the judge, but I think I could work within any guidelines that I'm required to.

Senator SIMON. I thank you very, very much, Judge Schell, and I want to thank Congressman Ralph Hall for—I want to tell you, Judge Schell, it is not very often that members of the House or Senate sit through two or three other nominees before they get to the person who is under consideration. It is a real tribute to you that Congressman Hall is here all this time.

Judge SCHELL. I appreciate him very much being here, and I appreciate your time, Mr. Chairman.

[Response to questions follow:]

May 16, 1988

Honorable Strom Thurmond
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Senator Thurmond:

I am enclosing the responses to the questions I received after today's hearing.

Thank you for your consideration and courtesies of this date.

Sincerely,

Richard Schell

Richard A. Schell

QUESTIONS FOR JUDGE RICHARD SCHELL, OF TEXAS, TO BE UNITED STATES DISTRICT JUDGE FOR THE EASTERN DISTRICT OF TEXAS

1. JUDGE SCHELL, ARE THERE EVER ANY CIRCUMSTANCES UNDER WHICH A JUDGE SHOULD ATTEMPT TO DECIDE A CASE ON SOME BASIS OTHER THAN ONE WHERE THE INTENT OF THE FRAMERS OF LEGISLATION OR CONSTITUTIONAL PROVISIONS CAN BE DETECTED EITHER THROUGH THE TEXT OF A PROVISION OR ITS SURROUNDING LEGISLATIVE HISTORY?

ANSWER: I BELIEVE THAT JUDGES SHOULD ALWAYS ENDEAVOR TO INTERPRET THE LAW IN A WAY THAT IS CONSISTENT WITH THE INTENT OF THE LAWMAKERS. THIS CONCEPT IS BASIC TO THE PRINCIPLE OF THE SEPARATION OF POWERS. IN SITUATIONS WHERE THE STATUTE OR CONSTITUTIONAL PROVISION IS WORDED GENERALLY AND THE LEGISLATIVE INTENT OR THE INTENT OF THE FRAMERS IS UNCLEAR, THEN THE JUDGE IS UNAVOIDABLY INVOLVED IN MAKING POLICY TO SOME EXTENT. IN SUCH A SITUATION, THE JUDGE STILL HAS AN OBLIGATION TO DECIDE THE CASE BEFORE THE COURT AND THE BEST HE CAN DO IS TO TRY TO MINIMIZE THE IMPOSITION OF HIS OWN PERSONAL PREFERENCES IN INTERPRETING THE LAW IN QUESTION.

2. JUDGE SCHELL, ONE OF THE CRITICISMS OF JUDICIAL ACTIVISM IS A TENDENCY BY THE JUDICIARY TO EMPLOY THE INDIVIDUAL PLAINTIFF AS A VEHICLE FOR THE IMPOSITION OF FAR-REACHING ORDERS EXTENDING TO BROAD CLASSES OF INDIVIDUALS. DO YOU FEEL THAT THIS CRITICISM IS VALID, AND WOULD YOU PLEASE EXPLAIN YOUR ANSWER?

ANSWER: WHETHER THAT CRITICISM IS VALID CAN ONLY BE ANSWERED ON

A CASE BY CASE BASIS AFTER ANALYSIS OF EACH PARTICULAR LAWSUIT AND THE BREADTH OF THE REMEDIAL ACTION TAKEN BY THE COURT. I DO AGREE THAT THE JUDGE SHOULD NOT USE THE PLAINTIFF AS A PRETEXT TO EXTEND THE COURT'S POWER BEYOND THE PARTICULAR "CASE" OR "CONTROVERSY" PRESENTED. UNDER ARTICLE III OF THE CONSTITUTION, THE JUDGE'S POWER IS LIMITED TO THE RESOLUTION OF THE DISPUTE THAT IS LEGITIMATELY BEFORE THE COURT IN THE PENDING LAWSUIT. OF COURSE, LAWSUITS MAY VARY IN THE EXTENT TO WHICH JUDICIAL INTERVENTION IS NECESSARY. MOREOVER, THE RESOLUTION OF A DISPUTE MAY UNAVOIDABLY IMPACT OTHERS. THIS IS ESPECIALLY TRUE IN THE AREA OF LAWSUITS INVOLVING GOVERNMENT-RUN CUSTODIAL INSTITUTIONS. BUT, THE JUDGE'S ORDERS SHOULD SWEEP NO BROADER THAN THAT WHICH IS ABSOLUTELY NECESSARY TO RESOLVE THE DISPUTE AMONG THE PARTIES TO THE LAWSUIT.

Senator **Simon**. Judge Cambridge.

TESTIMONY OF HON. WILLIAM G. CAMBRIDGE, HASTINGS, NE, TO BE U.S. DISTRICT JUDGE FOR THE DISTRICT OF NEBRASKA

Judge **Cambridge**. Thank you, Mr. Chairman.

Senator **Simon**. Judge Cambridge, you heard the fine things your two Senators had to say about you. Two questions have arisen. One is there was a poll done among attorneys and they found you somewhat biased against the accused in criminal cases.

You are familiar with the poll I am talking about?

Judge **Cambridge**. I am, sir.

Senator **Simon**. Do you have any comments on that?

Judge **Cambridge**. I do not feel that I am biased, Senator, against the accused. I think that the accused before the State is entitled to the benefit of having every doubt resolved in his favor. We have here a situation where we have a State, a large entity, against which he must defend himself.

So I do not feel that that is a just criticism. It may well be that it stems from the fact that I have been a little stiffer in my sentencing than I think some judges have, but I do not feel that my sentencing has been harsh.

As the judge that just preceded me said, you can have variances in sentences that appear for the same crime, one sentence, very lenient, one not so lenient. And I would say that my sentences are in the mid-line. I feel comfortable with the sentences that I have imposed.

One attorney said of me when my nomination was disclosed that he felt that my sentences fit the crime, and I considered that a compliment. But if you compare my sentences against some of the more lenient sentences, somebody might be apt to say, well, he is tougher on sentencing.

And in the respect that when they are compared with more liberal sentences, they probably are, but they are not harsh; I do not feel they are unduly harsh, I sleep very well at night, Senator, and I could not if I felt I had imposed a sentence that was too harsh.

I did impose one a while ago back, and recently in Nebraska we were allowed the discretion to reduce a sentence. I got to thinking about that one, and on my own motion I reduced it. It can be done either on the motion of the defendant or on the judge's own motion. I had originally sentenced him to 36 months and I reduced it to 18 months because I felt that the crime was such that that was a more appropriate sentence.

Senator **Simon**. Okay, and for the record I simply want to mention that in all other categories, the reaction in the poll of the Nebraska State Bar Association—Judge Cambridge was ranked satisfactory to good, on all of them, with the exception of the case of bias or prejudice in criminal cases.

You have heard the discussion on the question of discrimination, and you are aware, I assume, of the Code of Judicial Conduct on the matter of discrimination.

Judge **Cambridge**. I am, sir.

Senator **Simon**. Yes. Do you belong to any organizations that do discriminate?

Judge CAMBRIDGE. No, I do not. As I indicated on my questionnaire, I do belong to the Masons, and the Masons don't have women members, but I do not feel that the Masons invidiously discriminate.

My understanding of the term "invidious" is tending to cause discontent, animosity, or envy; of an unpleasant or objectionable nature; of a kind to cause harm or resentment; so unlikable as to arouse antagonism or aversion. Invidious applies to what cannot be used or performed without creating ill-will, odium or envy. And I do not believe that those terms apply to anything that the Masons do, Senator.

Senator SIMON. Incidentally, we have asked the bar association to clarify this area because there is an area here, the Masons, the Knights of Columbus, and others, where, frankly, there is discrimination, but these are social organizations rather than business or professional organizations. We have asked the bar association for a clarification and I hope we will get that.

You belong to two country clubs.

Judge CAMBRIDGE. Just one now, the Lochland Country Club, and it does not discriminate in any manner. It does have a black member; there is a black family that belongs to it. We have very few blacks in the area where I live, but we do have the one family in our club.

It is open to anybody who wishes to apply. The membership fee is nominal compared to what Judge——.

Senator SIMON. The Cherry Hills Country Club, yes. [Laughter.]

Judge CAMBRIDGE. Ours only runs about $600 a year and anybody willing to pay that can belong to our country club and play golf.

Senator SIMON. I spent two of my college years at Dana College in Blair, NE, so I have a little feeling for Hastings, NE, and I could not conceive of a $30,000 membership fee in Hastings, NE.

Judge CAMBRIDGE. Yes, you would know.

Senator SIMON. My information also says there is a golf club that is listed separately from the country club. Is that the same thing?

Judge CAMBRIDGE. I'm sorry?

Senator SIMON. My information is that you are a member of two country clubs—you say only one—and also a golf club.

Judge CAMBRIDGE. No, no.

Senator SIMON. That is the same thing?

Judge CAMBRIDGE. The only country club that I belong to is the Lochland Country Club, which is a golf club.

Senator SIMON. Okay.

Judge CAMBRIDGE. At one time I had belonged to the Meadowbrook Country Club there, but that has been many years ago, and maybe that is—and before that, there was one called Southern Hills and I had belonged to it, too.

Senator SIMON. You belong to two national fraternities. What is the nature of those fraternities?

Judge CAMBRIDGE. The one fraternity is the college fraternity, Phi Kappa Psi, that I belonged to while I was at the University of Nebraska, and the other fraternity is Phi Delta Phi, which is a legal fraternity that I belonged to while I was in law college. Phi Delta Phi's membership is open to, I believe, anybody in the legal field, and Phi Kappa Psi was a social fraternity that had a house where I lived while I went to school and is that type of organization.

Senator SIMON. In your background, it appears you had very little Federal court practice. The indication is about 1 percent of the cases you handled in private practice were before the Federal court.

How do you plan to bring yourself up to speed so that you can handle Federal court matters well?

Judge CAMBRIDGE. I am fortunate in this regard, Senator. In Nebraska, we adopted the Federal Rules of Evidence a number of years ago, with certain modifications, but essentially they are the same as the Federal rules. So I am very conversant with those.

We have also adopted the Federal Rules of Discovery, with, again, certain modification, but very little modification. Our codes of civil procedure and criminal procedure are somewhat different, but there are a good many similarities, too.

But there is no doubt about it. I will be acting on a different level if I am confirmed by the Senate, and in that connection it is going to involve some hard work; but, of course, any field of law involves that. There will be new problems, on this level, but that is what the practice of law is; it is new and different problems, and that is what judging is about, too.

You have some matters that are, routine that you have before you a number of times, but frequently there are many items that are new to you and, that is what makes the profession the challenge and the joy that it is.

I have, talked to United States District Judge Lyle E. Strom in Omaha and if I am confirmed, I am sure he will extend to me his assistance, and cooperation. I have received as a nominee some materials from the Federal Court Center, and they have seminars and continuing legal education programs that I intend to avail myself of, too.

And so I feel that although there is going to be a transition and an adjustment, I think it is well within my capability and I look forward to it.

Senator SIMON. We thank you very, very much, Judge Cambridge. I might add that Senator Thurmond may have some questions in writing for you and for the other nominees. We would appreciate getting a prompt response on those.

Judge CAMBRIDGE. All right. Thank you very much.

Senator SIMON. We thank you very much.

I notice Virginia Smith's husband back here. Mr. Smith, we are pleased to have you here, too.

The hearing stands adjourned.

Judge CAMBRIDGE. Thank you, Senator.

[Whereupon, at 3:48 p.m., the committee was adjourned.]

[Written questions and answers for Judge Cambridge follow:]

May 16, 1988

Honorable Strom Thurmond
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Senator Thurmond:

I am enclosing the responses to the questions I received after today's hearing.

Thank you for your consideration and courtesies of this date.

Sincerely,

William G. Cambridge

QUESTIONS FROM SENATOR THURMOND FOR JUDGE WILLIAM G. CAMBRIDGE, OF NEBRASKA, TO BE UNITED STATES DISTRICT JUDGE FOR THE DISTRICT OF NEBRASKA

1. JUDGE CAMBRIDGE, ARE THERE EVER ANY CIRCUMSTANCES UNDER WHICH YOU WOULD CONSIDER IT APPROPRIATE TO DECIDE A CASE ON SOME BASIS OTHER THAN ONE WHERE THE INTENT OF THE FRAMERS OF LEGISLATION OR CONSTITUTIONAL PROVISIONS CAN BE DETECTED, EITHER THROUGH THE TEXT OF A PROVISION OR ITS SURROUNDING LEGISLATIVE HISTORY?

ANSWER: NO. I CANNOT ENVISION ANY SUCH CIRCUMSTANCES.

2. JUDGE CAMBRIDGE, THOMAS JEFFERSON REMARKED SHORTLY AFTER THE RATIFICATION OF THE CONSTITUTION THAT "OUR NATION'S PARTICULAR SECURITY IS THE POSSESSION OF A WRITTEN CONSTITUTION. LET US NOT MAKE IT A BLANK PAPER BY CONSTRUCTION." JUDGE CAMBRIDGE, WHAT DO YOU THINK HE MEANT BY THAT WARNING: "LET US NOT MAKE IT A BLANK PAPER BY CONSTRUCTION"?

ANSWER: I BELIEVE THAT HE MEANT THAT THE CONSTITUTION MUST NOT BE CONSTRUED AWAY BY JUDICIAL DECISIONS.

WILLIAM H. ERICKSON

Birth:	May 11, 1924	Denver, Colorado
Legal Residence:	Colorado	
Marital Status:	Married	Doris Letty Rogers 4 children
Education:	1942 - 1947	Colorado School of Mines Petroleum Engineer Degree
	1947 - 1950	University of Virginia School of Law LL.B.
	1949	University of Michigan Law School (Oil & Gas Law)
Bar:	1951	Colorado
Military Service:	May - Nov, 1943	Army Air Force Aviation Student
Experience:	1950	A.X. Erickson Family Farm Petroleum Engineer & Farm Manager
	1951 - 1958	A. X. Erickson, Esq. Associate
	1958 - 1969	Hindry, Erickson & Meyer Partner
	1969 - 1970	Erickson & Littell Partner
	1970 - 1971	The William H. Erickson Professional Company Partner
	1971 - present	Justice Colorado Supreme Court Chief Justice (1981-85)
Office:	Colorado Supreme Court 2 East 14th Avenue, Room 465 Denver, Colorado 80203 303 837-3747	
Home:	10 Martin Lane Englewood, Colorado 80110	

To be United States District Judge for the District of Colorado

I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. **Full name (include any former names used.)**

   William Hurt Erickson

2. **Address: List current place of residence and office address(es).**

   Office: Colorado Supreme Court
   2 East 14th Avenue, Room 465
   Denver, Colorado 80203
   (303) 837-3747

   Home: 10 Martin Lane
   Englewood, Colorado 80110
   (303) 789-0333

3. **Date and place of birth.**

   May 11, 1924
   Denver, Colorado

4. **Marital Status (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).**

   Doris Letty Rogers
   Homemaker

5. **Education: List each college and law school you attended, including dates of attendance, the degrees received, and dates degrees were granted.**

   Colorado School of Mines
   September 1942 to January 1947
   Petroleum Engineer

   University of Akron
   Summer of 1942
   Aviation Student Training
   Transferred to Randolph Field for Aviation Cadet Training.

   University of Virginia School of Law
   September 1947 to June 1950
   LL.B. and J.D. 1950

   University of Michigan Law School
   1949
   Transferred to take specialized course in oil and gas law.

6. Employment Record: List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including firms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.

   1950-51: Worked for my father, A.X. Erickson, on land we owned in Bailey County, Texas, as a petroleum engineer and as a farm manager.

   1951-58: Practiced law with my father, A.X. Erickson, at 626 University Building, 16th and Champa Streets, Denver, Colorado.

   1958-69: Practiced law as a partner with the firm of Hindry, Erickson and Meyer at 818 17th Street, Suite 1611, Denver, Colorado.

   1969-70: Practiced law as a partner with the Firm of Erickson and Littell at 440 Capitol Life Center, Denver, Colorado.

   1970-71: Formed the William H. Erickson Professional Company where I practiced law with former associates of mine at 303 E. 17th Avenue, Suite 850, Denver, Colorado.

   1971-Present: Justice of the Colorado Supreme Court. Served as Deputy Chief Justice from April 1980 until May 1983. Served as Chief Justice from May 1983 to June 30, 1985.

7. Military Service: Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.

   Yes
   May 23, 1943 - date of induction
   November 27, 1943 - date of honorable discharge
   Army Air Force, Aviation Student
   Serial Number 37346719
   Present status: Veteran -- no reserve status

8. Honors and Awards: List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.

- * Member of the Council of the American Law Institute (1972-);
- * Chairman of the Fellows of the American Bar Foundation (1985-86) (State Chairman 1980-83), Vice-Chairman (1984-85), Secretary (1983-84);
- * Fellow of the American College of Trial Lawyers (State Chairman 1970); Member Federal Rules Committee (1984-);
- * Fellow of the International Academy of Trial Lawyers (former Director and Secretary-Treasurer); Member of Judiciary Committee (1983-);
- * Fellow of the International Society of Barristers (President until the time of appointment to the Court in 1971);
- * Fellow, Colorado Bar Foundation;
- * Order of the Coif;
- * Former Member, National Advisory Council Practising Law Institute;
- * Honorary Fellow of the National College of Criminal Defense Lawyers and Public Defenders;
- * Director, National Judicial College (1975-79);
- * Chairman of the President's National Commission for the Review of Federal and State Laws Relating to Wiretapping and Electronic Surveillance (5 Volume Report to Congress in 1976);
- * Participated in founding both the National College for District Attorneys and the National College for Criminal Defense Lawyers (University of Houston).
- * Honorary Chairman, National Education Institute;
- * National Council of Trustees Freedoms Foundation at Valley Forge. Former national juror on selection of the Freedoms Foundation Writing Award. Member Colorado Advisory Council for Freedoms Foundation;
- * Member of the Institute of Judicial Administration's Committee for the Promulgation of Juvenile Justice Standards.
- * Member of the Executive Committee, Commission on Accreditation for Law Enforcement Agencies (1980-83);
- * Former member of the Board of Directors of the American Judicature Society;

- Director, Pretrial Services Resources Center (1979-);
- Former State Director of the National Legal Aid and Defender Association;
- President of SCRIBES (1977-78);
- Former Director, National Association for Defense Lawyers in Criminal Cases.
- Gold Medal Award for contributions to advancement of law science relationships (Law Science Academy 1969).
- Chairman, Colorado Criminal Jury Instructions drafting committee (1972-83);
- Member of the Faculty, New York University Appellate Judges School (1972-84);
- Visiting Woodrow Wilson Fellow and Lecturer at Washington & Lee University (1979);
- Pound Conference Follow-Up Task Force (1976), see Report of the Pound Conference Follow-Up Task Force, 74 F.R.D. 159, Responses of the American Bar Association, 64 A.B.A. J. 48 (1978).
- Distinguished Board of Visitors, University of Colorado Law School (1982-86);
- Board of Directors, American Board of Trial Advocacy (1984-);
- Ancillary Committee on Federal Review of State Court Convictions, Conference of Chief Justices (1984-85);
- Faculty, National Institute of Trial Advocacy (1971-73);
- Faculty, Michigan Institute of Trial Advocacy (1972);

9. Bar Associations: List all bar associations, legal or judicial-related committees or conferences of which you are or have been a member and give the titles and dates of any offices which you have held in such groups.

A) ABA ACTIVITIES:

- Board of Governors (Judicial member-at-large, 1975-79);
- Chairman of the American Bar Association Standing Committee on the Administration of Criminal Justice (1973-76, 1984-86);
- Section Delegate of the Criminal Justice Section to the House of Delegates (1972-74);
- Chairman and Member of the Special Committee on the Administration of Criminal Justice (1973-76); Board of Governors' Liaison (1976);

- Chairman, Criminal Justice Section and Council (1971-72), Member of the Council (1968-75);
- Chairman, Committee on Professional Ethics in Criminal Justice (1970-76);
- Vice-Chairman, Committee on Implementation of Standards for Criminal Justice (1970-76);
- Member of Institute of Judicial Administration American Bar Association Committee for the Promulgation of Juvenile Justice Standards (1974-76);
- Member of the Ad Hoc Committee on the Proposed New Federal Criminal Code (1971-73);
- Member of the Special Committee on Federal Rules of Procedure (1970-71);
- Colorado Bar Association Delegate to the House of Delegates (1972-76);
- Member of the Special Committee on ABA Standards for Criminal Justice on Discovery and Procedure Before Trial (1969-70);
- Colorado State Delegate to the House of Delegates of the American Bar Association (1979-).
- Chairman of the Committee to Implement the American Bar Association Standards for Criminal Justice (1977-84);
- Chairman of the American Bar Association Committee to Implement the Standards for Criminal Justice for the Tenth Circuit (1969-);
- Member of House of Delegates Committee on Rules and Calendar (1981), Committee on Drafting (1984);
- Member, Committee on Ethics and Professional Responsibility (1983-86);
- Member of the American Bar Association Action Commission to Reduce Court Costs and Delay (1979-84);
- Member of the American Bar Association Long Range Planning Council (1979-83);
- Member, ABA House of Delegates Committee on Drafting (1984-);
- Member of the Advisory Committee on Revision of Uniform Rules of Criminal Procedure (1972);
- Member of the American Bar Association Federal Rules Committee (1969-71).

B) COLORADO BAR ASSOCIATION ACTIVITIES:

* Co-chairman of the Colorado Task Force on Courts -- Colorado Commission on Criminal Justice Standards and Goals;
* Member of the Board of Governors of the Colorado Bar Association (1965-72);
* Award of Merit of the Colorado Bar Association for work in continuing legal education (1968);
* Founder and Former Chairman, Criminal Law Section, Colorado Bar Association (1970-71);
* Member, Criminal Law Committee (1953-70);
* Chairman, Bar-Press Committee (1970);
* Former Chairman of the Negligence Section of the Colorado Bar Association (1961-62 and 1971-81);
* Vice-Chairman, Citizens' Committee For Non-Political Selection and Removal of Judges (1966).
* Member of the Council of the Judiciary Section (1971-75).

C) DENVER BAR ASSOCIATION ACTIVITIES:

* President of the Denver Bar Association (1968-69);
* Former Member of the Board of Trustees of the Denver Bar Association (1959-63 and 1966-70);
* Member of the Institutes and Continuing Legal Education Committee (1966-71).

D) OTHER ASSOCIATIONS AND PROFESSIONAL SOCIETIES:
(Many of these were listed under question 8)

* Member of the Council of the American Law Institute (1972-);
* Chairman of the Fellows of the American Bar Foundation (1985-86) (State Chairman 1980-83), Vice-Chairman (1984-85), Secretary (1983-84);
* Fellow of the American College of Trial Lawyers (State Chairman 1970); Member, Federal Rules Committee (1984-);
* Fellow of the International Academy of Trial Lawyers (former Director and Secretary-Treasurer); Member of the Judiciary Committee (1983-);
* Fellow of the International Society of Barristers (President until the time of appointment to the Court in 1971);
* Fellow, Colorado Bar Foundation;

- Order of the Coif;
- Former Member, National Advisory Council Practising Law Institute;
- Honorary Fellow of the National College of Criminal Defense Lawyers and Public Defenders;
- Director, National Judicial College (1975-79);
- Chairman of the President's National Commission for the Review of Federal and State Laws Relating to Wiretapping and Electronic Surveillance (5 Volume Report to Congress in 1976);
- Participated in founding both the National College for District Attorneys and the National College for Criminal Defense Lawyers (University of Houston).
- Member of the Federal Rules Committee, American College of Trial Lawyers (1984-);
- Member Judiciary Committee International Academy of Trial Lawyers (1984-1987);
- Honorary Chairman, National Education Institute;
- National Council of Trustees Freedoms Foundation at Valley Forge. Former national juror on selection of the Freedoms Foundation Writing Award. Member Colorado Advisory Council for Freedoms Foundation;
- Member of the Institute of Judicial Administration's Committee for the Promulgation of Juvenile Justice Standards.
- Member of the Executive Committee, Commission on Accreditation for Law Enforcement Agencies (1980-83);
- Former member of the Board of Directors of the American Judicature Society;
- Member of the Courts Task Force of the National Advisory Commission on Criminal Justice Standards and Goals;
- Director, Pretrial Services Resources Center (1979-);
- Former State Director of the National Legal Aid and Defender Association;
- President of SCRIBES (1977-78);
- Former Director, National Association for Defense Lawyers in Criminal Cases.
- Gold Medal Award for contributions to advancement of law science relationships (Law Science Academy 1969).
- Member of the drafting committee of PROMIS (Prosecution Management Information Systems); Chairman, Colorado Criminal Jury Instructions drafting committee (1972-83);

- Member of the Faculty, New York University Appellate Judges School (1972-84);
- Visiting Woodrow Wilson Fellow and Lecturer at Washington & Lee University (1979);
- Pound Conference Follow-Up Task Force (1976), see Report of the Pound Conference Follow-Up Task Force, 74 F.R.D. 159, Responses of the American Bar Association, 64 A.B.A. J. 48 (1978).
- Distinguished Board of Visitors, University of Colorado Law School (1982-86);
- Board of Directors, American Board of Trial Advocacy (1984-);
- Ancillary Committee on Federal Review of State Court Convictions, Conference of Chief Justices (1984-85);
- Faculty, National Institute of Trial Advocacy (1971-73);
- Faculty, Michigan Institute of Trial Advocacy (1972);
- Roscoe Pound Trial Advocacy series on trial techniques at the University of Michigan where I conducted a vignette on cross-examination techniques.
- Co-chairman of the Committee for Enactment of Amendment One (merit plan for selection of judges) (1962).
- Chairman, Courts' Task Force, Colorado Commission on Criminal Justice Standards and Goals (1974-75);
- Court Representative on the Committee to Study Jury Selection Methods and Uniform Instructions in Criminal Cases (1971-72);
- Court Representative on the Committee on Colorado Uniform Jury Instructions (1971-72);
- Supervising Justice for the Colorado Supreme Court Grievance Committee and Unauthorized Practice of Law Committee (1975-);
- Supervising Justice for the revision of the Colorado Uniform Jury Instructions (1986-).

5) Court Reform:

- Citizens' Conference for Modernization of South Carolina Courts (1972); Montana Plan for Court Modernization (1971); Wyoming Citizens for Court Improvement (1972); Citizens' Conference for Modernization of Alabama Courts (1973); Iowa Citizens' Conference on Criminal Justice Standards and Goals (1974); United Nations and

National College of the State Judiciary Seminar on Crime Legislation, Judicial Procedures, and Other Forms of Social Control in the Prevention of Crime.

* Prior to my appointment to the Supreme Court, I served as a member of the Colorado Supreme Court Rules Committee and participated in the preparation of the Colorado Rules of Criminal Procedure, Rules of Appellate Procedure, and assisted in making recommendations relating to the Amendments to the Colorado Rules of Civil Procedure.

10. Other Memberships: List all organizations to which you belong that are active in lobbying before public bodies. Please list all other organizations to which you belong.

(a) Fraternities:

Phi Delta Phi, legal fraternity (1949)
Sigma Alpha Epsilon (1943)

(b) Other Activities in the Community:

As a lawyer, I participated as lawyer-chairman for the United Fund in 1967.

I have served on Law Day Committees nearly every year since I was admitted as a lawyer.

I am a member of the following organizations:

Denver Athletic Club, 1325 Glenarm Pl., Denver, Colorado 80202
Cherry Hills Country Club, 4125 So. University Boulevard, Englewood, Colorado 80110
Denver Press Club, 1330 Glenarm Pl., Denver, Colorado 80202
Racquet World, 2695 So. Monaco, Denver, Colorado 80222
Denver Tennis Club, E. 4th Ave. & Forest St., Denver, Colorado 80210

11. **Court Admission:** List all courts in which you have been admitted to practice, with dates of admission and lapses if any such memberships. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.

Colorado	1951
United States District Court for the District of Colorado	1951
United States Court of Appeals for the Tenth Circuit	1952
Supreme Court of the United States	1953
United States Court of Appeals for the Ninth Circuit	1963
United States Court of Appeals for the Fourth Circuit	1966

12. **Published Writings:** List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.

A. Published Articles:

American Bar Association Section of Insurance Negligence and Compensation Law, Depositions, Limited or Unlimited (1957).

Rules 18 Through 22, Colorado Rules of Criminal Procedure, 34 Rocky Mtn. L. Rev. 37 (1961).

One Year Review of Civil Procedure and Appeals, 37 Dicta 21 (1960), 38 Dicta 133 (1961), 39 Dicta 133 (1962).

Plaintiff's Advantageous Use of Discovery, Pre-Trial, and Summary Judgments, 40 Denver L. J. 192 (1963).

Trial of a Personal Injury Action, a 113-page outline for the Colorado Bar Association on negligence law in Colorado (1967).

Chapters on Motion Practice and Discovery in Criminal Cases, in American Trial Lawyers Association, How to Defend a Criminal Case from Investigation to Verdict (1967).

What Constitutes an Assault?, 16 Cleveland-Marshall L. Rev., no. 1 (1967).

Colorado Institute of the American College of Trial Lawyers & The Colorado Bar, Trial Manual for the Defense of Criminal Cases, addendum (1967) (two volumes) (a project of the American College of Trial Lawyers, Joint Committee on Continuing Legal Education of The American Law Institute and the American Bar Association, the National Defender Project of the National Legal Aid and Defender Association).

The Right to Discovery in a Criminal Case, Int'l Soc'y Barristers Q., no. 2 (1968).

American College of Trial Lawyers, Accusation, Arraignment, and Pre-trial Motions, Right to Bail, and Discovery (1968).

The Constitutional Framework for Objections to Evidence in a Criminal Case, Int'l Soc'y Barristers Q. 52 (1969).

Chapters on Discovery and Opening Statements in Practising Law Institute, Defending Tax Fraud Prosecutions (1969).

Voir Dire: Criticism and Comment, 47 Denver L. J. 465 (1970).

Chapter on Discovery in Practising Law Institute, Criminal Trial Tactics: A Sourcebook (1971).

A Criminal Case in England from Arrest Through Appeal -- Compendium of Speakers, 10 Am. Crim. L. Q. 325 (1971).

Criminal Discovery, Yesterday, Today and Tomorrow, in National District Attorneys Association, The Prosecutor's Deskbook (1971).

Will Colorado's Efforts to Improve the Administration of Justice Help Montana?, 33 Mont. L. Rev. 52 (1972).

Will Colorado's Efforts to Improve the Administration of Justice Help Wyoming?, Wyo. L. Rev. (1972).

The Standards of Criminal Justice in a Nutshell, 32 La. L. Rev. 369 (1972) (reprinted in the Pa. Bar A. Q. (1972)).

Symposium: Law and Psychiatry Introduction, 10 Am. Crim. L. Rev., no. 3 (1972).

Criminal Defense Techniques in The Standards of Criminal Justice in a Nutshell Revisited (Cipes ed. 1972).

The Criminal Justice Standards -- A Summary, 55 J. Am. Judicature Soc'y, no.9 (1972).

How Can Trial Disruptions Be Curbed?, 55 J. Am. Judicature Soc'y, no. 9 (1972).

Comparative Negligence, Colo. Law. 1 (Aug. 1972).

The Supreme Court's Impact on Criminal Law in the 1971-72 Term of the Court, 8 Int'l Soc'y Barristers Q., no.1 (1973) (Summaries of the 1974-75 and 1975-76 terms were also printed in the quarterly).

The Right to a Speedy Trial: Standards for its Implementation, 10 Houston L. Rev. 237 (1973).

The Finality of a Plea of Guilty, 48 Notre Dame Law. 835 (1973).

Chapter on *Cross-Examination of the Expert*, appendix II, *Preparation of the Expert Medical Witness*, and appendix III, *The Whiplash Injury*, in Institute of Continuing Legal Education (Hutchins Hall, Ann Arbor, Michigan), Experts in Litigation.

The History of the Tripod of Justice, 64 Mil. L. Rev. 79 (1974).

The ABA Standards: An Overview, 12 Am. Crim. L. Rev. 277 (1975).

Monitoring and Updating the ABA Standards: The Continuing Responsibility, 12 Am. Crim. L. Rev. 469 (1975) (co-authored with Judge William Jameson).

Outline of Significant Criminal Law Decisions of the United States Supreme Court, 1973-74 Term, 1 Nat'l J. Crim. Def., no. 1 (1975).

The ABA Standards for Criminal Justice, appendix A in Criminal Defense Techniques (Cipes ed. 1975).

Why an Oath for Law Clerks?, 14 Judges J. 20 (1975).

The Pronouncements of the Supreme Court of the United States in the Criminal Law Field During the 1974-75 Term, 1 Nat'l J. Crim. Def. 373 (1975).

Leflar: Appellate Judicial Opinions, 47 U. Colo. L. Rev. 149 (1975) (book review).

Chapter on *Jury Instructions in Criminal Cases*, in Cipes & Bernstein, Criminal Defense Techniques (1976). Co-authored with Professor Frank Jamison. Professor Jamison and I prepared the Colorado Pattern Jury Instructions for Criminal Cases in 1972 with the assistance of a number of members of the trial bar.

Clerk's Manual (1976) (manual for law clerks on the Supreme Court of Colorado which covers clerk duties, rules of conduct, procedures, and forms).

The Pronouncements of the Supreme Court of the United States in the Criminal Field During the 1975-76 Term, 5 Colo. Law. 1274 (1976), 2 Nat'l J. Crim. Def. 157 (1976).

The Evolution of Discovery in Criminal Cases, in 1A Cipes Criminal Defense Techniques (1977).

The Pronouncements of the Supreme Court of the United States in the Criminal Field During the 1976-77 Term, 6 Colo. Law. 1516 (1977), 3 Nat'l J. Crim. Def. 157 (1977).

Fair Trial and Free Press: The Practical Dilemma, 27 Stan. L. Rev. 243 (1977).

Choosing a Law Clerk, 1 St. Ct. J., no. 1 (1977) (National Center for State Courts).

The Trial Transcript -- An Unnecessary Roadblock to Expeditious Appellate Review, 11 U. Mich. J.L. Ref. 344 (1978).

Pronouncements of the United States Supreme Court Relating to the Criminal Law Field: 1977-78, 7 Colo. Law. 1555 (1978), 4 Nat'l J. Crim. Def. 1 (1978).

Effective Appellate Advocacy, 7 Colo. Law. 1549 (1978) (reprinted in 3 Int'l Soc'y Barristers Q. 333 (1979)).

Responses of the American Bar Association, in *New Directions in the Administration of Justice: Responses to the Pound Conference*, 64 A.B.A. J. 48 (1978).

ABA Standards for Criminal Justice: A Treasure-Trove for Bar Leaders, first in a series of bar activation monographs published by the Division of Bar Services.

The Grand Jury: Constitutional Perspectives, 16 Crim. Def. 2 (1979) (jointly prepared by William H. Erickson & B.J. George).

First Amendment Limitations on the Confidentiality of Lawyer Disciplinary and Disability Proceedings, 67 U. Ky. L.J. 4 (1978-79).

Five Important Issues in Medicine and Law in 1978-79, 14 Int'l Soc'y Barristers Q., no. 3 (1979).

Important Issues in Medicine and Law, 16 Trial Mag. 23 (1980).

Pronouncements of the United States Supreme Court on Criminal Law: 1978-1979, 5 Nat'l J. Crim. Def. 1 (1979).

W. Erickson & W. Neighbors, Judge's Bench Book, Search and Seizure (1979).

Standards of Competency for Defense Counsel in a Criminal Case, 17 Am. Crim. L. Rev. 2 (1979).

Search and Seizure: A Treatise on the Fourth Amendment, 79 Mich. L. Rev. 3 (1980) (book review).

Pronouncements of the United States Supreme Court on Criminal Law: 1979-1980, 9 Colo. Law. 1787 (1980), 5 Nat'l J. Crim. Def. 135 (1979).

The Pound Conference Recommendations: A Blueprint for the Justice System in the Twenty-First Century, 76 F.D.R. 277 (1978).

Colorado Supreme Court Internal Operating Procedures (1981).

Pronouncements of the United States Supreme Court Relating to the Criminal Law Field: 1980-1981, 7 Nat'l J. Crim. Def., no. 2 (1981), Colo. Law. 2198 (Sept. 1981).

The Perjurious Defendant: A Proposed Solution to the Defense Lawyer's Conflicting Ethical Obligations to the Court and to His Client, 59 Den. L. J. 75 (1981).

What Makes a Good Judge?, 14 IJA Report, no. 2 (1982), 22 Judges' J. 2983 (1982).

W. Erickson & W. Neighbors, Judge's Bench Book (1981).

W. Erickson & W. Neighbors, Judge's Bench Book, Search and Seizure (1983) (update).

A Summary of Colorado Supreme Court Internal Operating Procedures, Colo. Law. 354 (Feb. 1982).

Pronouncements of the United States Supreme Court Relating to the Criminal Law Field 1981-1982, 11 Colo. Law. 2327 (1982), 16 Prosecutor, no. 4 (1982), 18 Trial Mag. 44 (1982), 96 F.R.D. 437.

A Book Review With an Eye to Ethics, 81 Mich. L. Rev. 4 (1983) (A book review of A. Dershowitz, The Best Defense).

Pronouncements of the United States Supreme Court Relating to the Criminal Law Field 1982-1983, 12 Colo. Law. 1377 (1983), 17 Prosecutor, no. 3 (1983), 99 F.R.D. 345.

Colorado's Answer to the Local Rules Problem, 16 Mich. J.L. Reform 493 (1983).

Pronouncements of the United States Supreme Court Relating to the Criminal Law Field 1983-1984, 13 Colo. Law. 1561, (1984), 18 Prosecutor no. 2 (1984), 103 F.R.D. 187.

Pronouncements of the United States Supreme Court Relating to the Criminal Law Field 1984-1985, 14 Colo. Law. 1541, (1985), 19 Prosecutor no. 2 (1985).

W. Erickson, W. Neighbors, & B. George, Constitutional Criminal Law (1985).

Has the Time Come for Standards to Improve the Art of Advocacy?, 21 Int'l Soc'y of Barristers Q. 297 (1986).

Pronouncements of the United States Supreme Court Relating to the Criminal Law Field 1985-1986, 15 Colo. Law. 1554 (1986), 20 Prosecutor no. 3 (1986).

The Unfulfilled Promise of Miranda v. Arizona, 24 Am. Crim. L. Rev. 2 (1987)

The Impact of the Judicial Confirmation Process on the United States Supreme Court, 17 Colo. Law. 223 (Feb. 1988).

B. Selected Speeches:

"The Need for Standards to Improve the Art of Advocacy," delivered to the American College of Trial Lawyers on November 14, 1985.

"Bar Association Responsibilities in Curbing Trial Disruptions" delivered to the National Conference of Bar Presidents on February 4, 1972.

"Charge to the New Members of the Bar of the Colorado Supreme Court" delivered April 15, 1971.

13. Health: What is the present state of your health? List the date of your last physical examination?

Excellent. Last physical examination was January 18, 1988.

14. Judicial Office: State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

December 1970 -- Merit Appointment to the Supreme Court of Colorado.

A vacancy occurred on the Colorado Supreme Court when Chief Justice Robert H. McWilliams was appointed to the United States Court of Appeals for the Tenth Circuit. A nominating commission submitted three names to the Governor. I was appointed in December 1970 and was given thirty days to wind up my practice. On February 3, 1971, I was sworn in and have been retained at the polls in three general elections.

In 1974, I stood for retention and was elected for a full ten-year term with approximately 85% of the votes cast in the affirmative. I was informed that the bar poll preceding the retention election had the lowest number of "no" votes for a Justice the Colorado Supreme Court registered under Merit Plan.

Since that time I have been retained in office and elected to successive ten-year terms. In the last bar poll for the 1984 general election 93.3% of the lawyers favored my retention.

15. Citations: If you are or have been a judge, provide: (1) citations for the ten most significant opinions you have written; (2) a short summary of and citations for all appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings; and (3) citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, please provide copies of the opinions.

(1) Ten opinions that I have written as a member of the Supreme Court of Colorado are listed below. None of the opinions has been reversed by another court.

a. United States v. Jesse, 744 P.2d 491 (Colo. 1987)
United States v. City and County of Denver, 656 P.2d 1 (Colo. 1982)
City and County of Denver v. United States, 656 P.2d 36 (Colo. 1982)

b. Leake v. Cain, 720 P.2d 152 (Colo. 1986)

c. People v. Spring, 713 P.2d 865 (Colo. 1985) (Erickson, J., dissenting in part, concurring in part), rev'd., 107 S. Ct. 515 (1986).

d. People v. Connelly, 702 P.2d 722 (Colo. 1985) (Erickson, J., dissenting in part, concurring in part), rev'd., 107 S. Ct. 515 (1986).

e. Jackson v. Harsco Corporation, 673 P.2d 363 (Colo. 1983) (to be annotated at A.L.R. 4th #17420)

f. People v. Freeman, 668 P.2d 1371 (Colo. 1983) (cited in 51 A.L.R. 4th 473)

g. People v. Sporleder, 666 P.2d 135 (Colo. 1983) (Erickson, C.J., dissenting)

h. Patterson v. Cronin, 650 P.2d 531 (Colo. 1982)

i. Burns v. McGraw-Hill Broadcasting, 659 P.2d 1351 (Colo. 1983)

j. People v. Schultheis, 638 P.2d 8 (Colo. 1981)

(2) (a) People v. Bannister, 199 Colo. 281, 607 P.2d 987 (Colo. 1980), remanded and judgment set aside, 449 U.S. 1 (1980) (per curium).

The trial court suppressed evidence seized from defendant's automobile, and the prosecution took an interlocutory appeal. We affirmed the trial court stating that "given the finding by the trial court that no exigent circumstances existed, there was no constitutional justification for the warrantless search and seizure." Bannister, 199 Colo. at 283, 607 P.2d at 988-89 (footnote omitted). The United States Supreme Court reversed, finding probable cause to be "self-evident." The Court further noted that "the Supreme Court of Colorado acknowledged that there was probable cause, but mistakenly concluded that a warrant was required to open the car door and seize the items within." Colorado v. Bannister, 449 U.S. at 3. The Court found that under the circumstances, the police officers had probable cause to seize the incriminating items without a warrant. (Citing, Carroll v. United States, 267 U.S. 132 (1925) and Chambers v. Maroney, 399 U.S. 42 (1970)).

(b) People v. Connelly, 702 P.2d 722 (Colo. 1985) (Erickson, J., dissenting in part, concurring in part), 107 S. Ct. 515 (1986).

The defendant, who was charged with second-degree murder, moved to suppress the confession and other evidence resulting from the confession prior to the preliminary hearing. The trial court suppressed inculpatory statements and any evidence that might have been derived from those statements, and the prosecution appealed. The majority opinion held: (1) the trial court did not err in ruling that defendant's initial statement to the officer was not the product of rational intellect and free will, where testimony of psychiatrist established that the defendant, on the occasion that the statement was made, was suffering from a serious mental disorder which placed him in a dilemma of confessing his crime to the police or committing suicide; (2) trial court did not err in concluding that the prosecution failed to prove by clear and convincing evidence that the defendant effectively waived his Miranda rights, in light of psychiatric testimony that the defendant was incapable of making an intelligent and free decision with respect to his constitutional rights; but (3) the blanket suppression order of derivative evidence would be reversed and remanded for further proceedings.

I wrote an opinion, joined by Justice Rovira, dissenting in part and concurring in part. While I agreed with the majority's analysis and resolution of the procedural issues in the case, I dissented to the exclusion of the defendant's spontaneous and unsolicited statements to the police officer. The crux of my opinion was that "a statement can be suppressed as involuntary only if it has been extracted by police questioning or obtained through improper external force. Statements which a defendant volunteers independent of police questioning or external force should not be subject to suppression under the fifth amendment." Connelly, 702 P.2d 722 (Erickson, J. dissenting in part and concurring in part).

My view of the voluntariness issue was vindicated by the United States Supreme Court, which found that coercive police activity is a necessary predicate to finding that a confession is not "voluntary" within the meaning of the due process clause. Here, the taking of respondent's statements and their admission into evidence did not violate that clause. The Court stated that while a defendant's mental condition may be a significant factor in the voluntariness calculus, this does not justify a conclusion that his mental condition, by itself and apart from its relation to official coercion, should ever dispose of the inquiry into constitutional voluntariness.

(c) People v. Bertine, 706 P.2d 411 (1985), rev'd, 107 S. Ct. 738 (1987).

The defendant was arrested for driving under the influence of alcohol. After he was taken into custody, but before his van was impounded, another officer inventoried the van's contents, opening a closed backpack containing various containers holding controlled substances, cocaine paraphernalia, and $700 in cash. The trial court granted the defendant's motion to suppress the evidence found during the inventory search, holding that while the search complied with the federal constitution, it violated the Colorado Constitution.

I authored the 5-2 majority opinion, where we affirmed the trial court's suppression order. We concluded that under Arkansas v. Sanders, 442 U.S. 753 (1979) and United States v. Chadwick, 433 U.S. 1 (1977), the fourth amendment requires exclusion of evidence seized by police officers in the warrantless search of closed containers found in an automobile. We distinguished Illinois v. Lafayette, 462 U.S. 640 (1983), because it did not involve an inventory search of an impounded automobile. Because the governmental interests supporting an automobile inventory search were not as great as those supporting a preincarceration search, we choose not to extend Lafayette to the facts of this case.

To determine whether the search complied with the fourth amendment of the federal constitution, we applied the legal standards set forth in South Dakota v. Opperman, 428 U.S. 364 (1976) and People v. Counterman, 192 Colo. 152, 556 P.2d 481 (1976). Applying the balancing test of these cases we concluded that the defendant's privacy interest in the cans outweighed the government's need to inventory their contents.

The United States Supreme Court granted certiorari to review the recurring question of federal law that we considered. Compare, e.g., United States v. Griffin, 729 F.2d 475 (7th Cir.) (upholding inventory search of package found in paper bag), cert. denied, 469 U.S. 830 (1984), with United States v. Bloomfield, 594 F.2d

1200 (8th Cir. 1979) (affirming suppression of evidence found in closed knapsack). The Court determined that Illinois v. Lafayette was dispositive, noting that it did not suggest the station house setting of that inventory search was not critical to the Court's holding. The Court also emphasized that so long as the police exercise their discretion to conduct inventory searches in accordance with standardized department regulations, the fourth amendment proscription against illegal searches and seizures would not be offended. The Court concluded its opinion: "While both Opperman and Lafayette are distinguishable from the present case on their facts, we think the principle enunciated in those cases govern the present one. The judgment of the Supreme Court of Colorado is therefore reversed." 107 S. Ct. at 743.

(d) People v. Spring, 713 P.2d 865 (Colo. 1985) (Erickson, J., dissenting in part and concurring in part), rev'd, 107 S. Ct. 851 (1987).

The defendant was convicted of first-degree murder, and he appealed. The Colorado Court of Appeals reversed on ground that certain inculpatory statements made by the defendant should have been suppressed. On certiorari, the Colorado Supreme Court held that: (1) absence of evidence that the defendant had been advised of, or could reasonable have expected, that interrogation would extend to matters beyond crime for which he was being held precluded the prosecution from establishing effective Miranda waiver; (2) prosecution failed to prove effective Miranda waiver in interrogation where officers periodically repeated questions until the defendant gave incriminating answers; and (3) defendant should have been allowed to testify as to statements made by others which corroborated his assertedly innocent state of mind before and after the homicide.

Justice Rovira joined my opinion, dissenting in part and concurring in part. I noted that "[l]aw enforcement officers have no duty under Miranda to inform a person in custody of all charges being investigated prior to questioning him." Spring, 713 P.2d at 880 (Erickson, J., dissenting in part and concurring in part). Miranda v. Arizona, 384 U.S. 436 (1966), specifically listed the constitutional rights the police must propound to a suspect before questioning him. In my view, the warnings given to Spring exceeded the requirements of Miranda. I strongly dissented to the majority's view that the defendant had not waived his rights because he was not advised that he would be questioned about the homicide: "[A] waiver of Miranda rights should never be held invalid simply because the suspect is not informed or does not know in advance of all matters that are under investigation and will be the subject of interrogation." Spring, 713 P.2d at 881 (Erickson, J., dissenting in part and concurring in part).

My position was vindicated by the United States Supreme Court. The Court quoted significant portions of my opinion at 107 S.Ct. at 855-56. The concluding paragraph of the Court's opinion closely reflected my dissenting opinion.

> This Court's holding in Miranda specifically required that the police inform a criminal suspect that he has the right to remain silent and that anything he says may be used against him. There is no qualification of this broad and explicit warning. The warning, as formulated in Miranda, conveys to a suspect the nature of his constitutional privilege and the consequences of abandoning it. Accordingly, we hold that a suspect's awareness of all the possible subjects of questioning in advance of interrogation is not relevant to determining whether the suspect voluntarily, knowingly, and intelligently waived his Fifth Amendment privilege.

Spring, 107 S. Ct. at 859.

(3) Significant Opinions on Federal and State Opinions:

(a) Perez v. People, 745 P.2d 650 (Colo. 1987) (Erickson, J., dissenting).

(b) People v. Porter, 742 P.2d 922 (Colo. 1987) (Erickson, J., concurring).

(c) Miller v. District Court, 737 P.2d 834 (Colo. 1987).

(d) People v. Shorty, 731 P.2d 679 (Colo. 1987) (cited in 55 U.S.L.W. 2438).

(e) People v. Santistevan, 715 P.2d 792 (Colo.) (Erickson, J., dissenting), cert. denied, 107 S. Ct. 468 (1986).

(f) People v. Spring, 713 P.2d 865 (Colo. 1985). (Erickson, J., dissenting in part, concurring in part), rev'd, 107 S. Ct. 851 (1987).

(g) People v. Bertine, 706 P.2d 411 (Colo. 1985) (cited in 54 U.S.L.W. 2211), rev'd, 107 S. Ct. 738 (1987).

(h) People v. Connelly, 702 P.2d 722 (Colo. 1985). (Erickson, J., dissenting in part, concurring in part), rev'd, 107 S. Ct. 515 (1986).

(i) People v. Oates, 698 P.2d 811 (Colo. 1985) (Erickson, J., dissenting) (cited in 53 U.S.L.W. 2592).

(j) People v. Deitchman, 695 P.2d 1146 (Colo. 1985) (Erickson, J. concurring).

(k) People v. Naranjo, 686 P.2d 1343 (Colo. 1984).

(l) People v. Freeman, 668 P.2d 1371 (Colo. 1983) (cited in 51 A.L.R.4th 473).

(m) People v. Sporleder, 666 P.2d 135 (Colo. 1983). (Erickson, J., dissenting)

(n) Burns v. McGraw-Hill Broadcasting Co., 659 P.2d 1351 (Colo. 1983).

(o) United States v. City and County of Denver, 656 P.2d 1 (Colo. 1982).

(p) Diversified Management, Inc. v. Denver Post, 653 P.2d 1103 (Colo. 1982) (Erickson, J., dissenting) (cited in 33 A.L.R.4th 193).

(q) Patterson v. Cronin, 650 P.2d 531 (Colo. 1982).

(r) People v. Aragon, 643 P.2d 43 (Colo. 1982).

(s) People v. Bustam, 641 P.2d 968 (Colo. 1982).

(t) People v. Harfmann, 638 P.2d 745 (Colo. 1981) (cited in 20 A.L.R.4th 539).

(u) People v. Schultheis, 638 P.2d 8 (Colo. 1981).

(v) People v. Brown, 632 P.2d 1025 (Colo. 1981).

(w) Parrack v. Town of Estes Park, 628 P.2d 1014 (Colo. 1981).

(x) State Dep't of Highways v. Davis, 626 P.2d 661 (Colo. 1981).

(y) Augustin v. Barnes, 626 P.2d 625 (Colo. 1981).

(z) People v. Smith, 620 P.2d 232 (Colo. 1980).

(aa) People v. New Horizons, Inc., 200 Colo. 377, 616 P.2d 106 (1980).

(bb) People v. Traubert, 199 Colo. 322, 608 P.2d 342 (1980).

(cc) Johnson v. Motor Vehicle Div., 197 Colo. 455, 593 P.2d 1363 (1979).

(dd) People v. District Court, 196 Colo. 401, 586 P.2d 31 (1978).

(ee) In re Interrogatories of Governor Regarding Sweepstakes Races Act, 196 Colo. 353, 585 P.2d 595 (1978).

(ff) DiLeo v. Board of Regents of Univ. of Colo., 196 Colo. 216, 590 P.2d 486 (1978) (Erickson, J., dissenting), cert. denied, 441 U.S. 927 (1979).

(gg) Veterans of Foreign Wars v. City of Steamboat Springs, 195 Colo. 44, 575 P.2d 835, appeal dismissed, 439 U.S. 809 (1978).

(hh) People v. Casias, 193 Colo. 66, 563 P.2d 926 (1977).

(ii) Denver Welfare Rights Org. v. Public Utilities Comm'n, 190 Colo. 329, 547 P.2d 239 (1976).

(jj) People v. Tabron, 190 Colo. 149, 544 P.2d 372 (1976).

(kk) People v. Anderson, 189 Colo. 34, 536 P.2d 302 (1975).

(ll) Walker v. Colorado Springs Sun, Inc., 188 Colo. 86, 538 P.2d 450 (Erickson, J., dissenting in part and concurring in part), cert. denied, 423 U.S. 1025 (1975), overruled by Diversified Management, Inc. v. Denver Post, Inc., 653 P.2d 1103 (Colo. 1982).

(mm) People v. District Court, 187 Colo. 333, 531 P.2d 626 (1975).

(nn) People v. White, 182 Colo. 417, 514 P.2d 69 (1973).

(oo) People v. Hill, 182 Colo. 253, 512 P.2d 257 (1973).

(pp) Pillar of Fire v. Denver Urban Renewal Auth., 181 Colo. 411, 509 P.2d 1250 (1973).

(qq) Westerberg v. District Court, 181 Colo. 10, 506 P.2d 746 (1973), cert. denied, 414 U.S. 1162 (1974).

16. Public Office: State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.

None.

17. Legal Career:

a. Describe chronologically your law practice and experience after your graduation from law school and until you became a judge, including:

After graduating from Law school, I worked for my father, A. X. Erickson on land that we own in Bailey County, Texas, as a petroleum engineer and as a farm manager for approximately one year.

1. whether you served as clerk to a judge, and if so, the name of the judge, the court, and the dates of the period you were a clerk.

I did not clerk for a judge.

2. **whether you practiced alone, and if so, the addresses and the dates.**

1951 - 1958

My father, A. X. Erickson, and I practiced law together from 1951-1958. We officed at 626 University Building, 16th & Champa Streets, Denver, Colorado, where my father had practiced law for more than thirty years. His only interest was to help me become a good trial lawyer. I assisted my father in preparing his cases for trial and sat in the second chair in a number of cases. Every case and all of my regular work was reviewed and critiqued by my father who demanded perfection.

3. **the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each.**

1958 - 1969

Hayes R. Hindry, who is now deceased, confined his practice to the tax field and was one of the first to utilize the revocable living trust in estate planning. In 1958, he suggested that we form a partnership. He had arranged for Milton E. Meyer, Jr., to move to Denver from St. Louis to assist him in his tax practice, and he believed that no firm should be without a trial lawyer.

In 1958, the firm of Hindry, Erickson & Meyer was formed and was located in the First National Bank Building, Suite 1611, 818 17th Street, Denver, Colorado. We agreed that my father was provided with office space in our suite and was designated "Of Counsel."

At the time the firm was formed, there were only the three named partners and my father. Our practice expanded, however, and at the time I withdrew from the firm, we had more then 22 lawyers and occupied the greater portion of the 23rd floor of the First National Bank Building.

Our first associate was Kerwin H. Fulton. He is now with the firm of Montgomery, Little, Young, Campbell & McGrew, 5445 DTC Pkwy., Suite 800, Englewood, Colorado 80011.

Charles F. Brega was our second associate and was hired to be my assistant in the firm's litigation section. He now practices as senior partner in the firm of Roath & Brega, 370 17th Street, Suite 900, Denver, Colorado 80202.

Arnold C. Wegher joined the firm as a tax consultant and now practices with several associates at 621 17th Street, Suite 2300, Denver, Colorado 80202.

C. Henry Roath, an expert in securities law, joined the firm as a full partner. He is now a partner with Charles F. Brega in the firm of Roath & Brega, 370 17th Street, Suite 900, Denver, Colorado 80202.

William Sims joined the firm as a real estate specialist but withdrew shortly thereafter to devote his full efforts to the promotion and sale of real estate. He is still engaged in the sale and development of mountain real estate.

Jay L. Gueck joined the firm to assist the litigation section. He remained until I withdrew, and then became associated with me. He later became a bankruptcy referee and, after serving about three years, resigned to practice law in Dallas, Texas.

John P. Kreisheimer was hired to handle estate work and probate. He withdrew to become associated with me in my practice. After I was named to the Colorado Supreme Court, John P. Kreisheimer established a law office at 802 East 17th Avenue, Denver, Colorado 80203

Robert D. Showalter was hired to assist the tax section. He is now in the process of forming a new partnership and is practicing law at 518 17th Street, Suite 1100, Denver, Colorado 80202.

John J. Hanlon withdrew from the firm and formed a partnership with Harry Arkin (Arkin & Hanlon). He has now given up his law practice to pursue a career in real estate development.

James J. Morrato served as one of my assistants and withdrew from the firm when I did. He is now the senior partner in the firm of Morrato, Bieging, Burrus & Colantuno, the successor to the William H. Erickson Professional Company. Morrato's firm is located at 5350 S. DTC Pkwy., Bldg. 52, Englewood, Colorado 80111.

Joseph F. Colantuno was hired as another tax expert by Milton E. Meyer. He also withdrew after I left and became associated with me in my practice. He is now a partner of James J. Morrato.

The other remaining associates with the firm prior to its dissolution did not work with me to any great extent.

During the time that I was with the firm, I was the senior member of the litigation department. When Hayes R. Hindry died, I was designated as the senior partner in the firm. At the time of dissolution several disputes arose that caused hard and bitter feelings on both sides. My former partners were quite distressed when Jim Morrato, Jay Gueck, Joseph F. Colantuno, and John P. Kreisheimer became associated with me. In turn, I was greatly distressed when the firm continued under the name of Hindry & Meyer after I left. Milton E. Meyer also left the firm and practiced with the firm of Thomas Espiriti (now disbarred) until he gave up the law practice to become an artist and painter.

Management policies had been a matter of bitter dispute prior to my withdrawal from the firm. For several years I had refused to sign a proposed partnership agreement drafted by C. Henry Roath. After I withdrew, I was unable to obtain an accounting, and it became necessary to employ counsel. Fred M. Winner served as my counsel until named United States District Judge for the District of Colorado. Thereafter James Clark of Baker & Hostetler, 303 17th Street, Denver, Colorado 80203, represented me in arbitration proceedings. Arbitration commenced, an accounting was ordered, and my former partners paid me the amount I was owed at the time of dissolution.

1969-1970

Duane O. Littell, a recognized expert in the insurance defense field, was a sole practitioner who employed associates to assist him. For years he practiced at 440 Capitol Life Center, Denver, Colorado 80203. We were close friends and we decided to form a partnership that could handle all types of litigation. The partnership was known as Erickson & Littell. He had two associates at the time and James J. Morrato joined us in the partnership venture. During that year, Jay L. Gueck, Joseph F. Colantuno, and John P. Kreisheimer joined our firm.

During the first year of practice, our work expanded beyond all description. The pace was hectic and we all worked impossible hours. Littell concluded that he preferred to continue his specialized insurance defense work at a slower pace. Therefore, he decided to continue his practice in his old quarters with fewer associates. As a result, we amicably dissolved the partnership, and accounted to each other. I assumed responsibility for those who previously were associated with me at Hindry, Erickson & Meyer, and moved into the space originally intended for the firm of Erickson & Littell. Duane Littell has retired and is now ranching in Missouri.

1970-1971

When Erickson & Littell was dissolved, The William H. Erickson Professional Company was formed. In addition to James J. Morrato, Jay L. Gueck, and John P. Kreisheimer, I hired Edward L. Volpe, who now offices at 303 E. 17th Ave., Suite 850, Denver, Colorado 80203-1261.

When I was appointed to the Supreme Court of Colorado our professional company was dissolved. The firm of Morrato, Gueck & Colantuno came into existence and retained the same office space. Shortly after assuming my judicial duties, John P. Kreisheimer withdrew from the new partnership to practice law alone. Edward L. Volpe also withdrew and established his own practice.

b. 1. What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years.

1951-1958

From the time of my admission to practice, my efforts were directed towards acquiring the ability and experience necessary to be a good trial lawyer. In the course of my practice, I handled nearly every type of litigation. In my first years of practice, I did everything that a young lawyer is called upon to do. I examined abstracts, handled quiet title suits, non-contested divorces, bankruptcies, and a number of other routine tasks.

Shortly after I was admitted to the bar, I contacted G. Walter Bowman, Clerk of the United States District Court for the District of Colorado, and volunteered to accept appointment in every criminal case that could possibly involve a trial. In 1951, federal appointments drew no compensation and were avoided by many lawyers. As a result, my offer was welcomed and I was appointed in a number of cases. The United States Court of Appeals for the Tenth Circuit appointed me to several cases within the first three months of my admission. Many of the federal judges gave me advice on trial techniques after I had lost or concluded a case.

During the first year of my practice, I tried several personal injury actions. I took a course in legal medicine at Tulane University that was taught by Doctor Hubert Smith. He was attempting, on an experimental basis, to determine whether a lawyer could be exposed to every phase of medicine in a two-week period. The course lasted two weeks and went from 8:00 a.m. to midnight every day. At the end of two weeks, I was exhausted but had an introduction to the nomenclature of medicine. From that time on, I became more involved in personal injury cases.

During the early years of my practice I tried nearly every type of civil and criminal case. I also handled a few notable contested divorce actions and was retained in an interstate divorce controversy between Jim Sloan and Marian Sloan. Sloan was one of the Reynolds Tobacco heirs.

1958-1969

After the firm of Hindry, Erickson & Meyer came into existence, I had occasion to appear in more tax litigation and sought the tax advice of Hayes R. Hindry. I became involved in corporate litigation and took part in a number of contests between stockholders and the suits that generally followed. I continued to handle a large amount of personal injury litigation, some criminal cases, and a wide variety of litigation. My work was confined wholly to the litigation field.

1969-1971

During the existence of Erickson & Littell and the William H. Erickson Professional Company, my work continued to encompass a broad litigation practice. In the last four years of my practice, more than 50% of my cases were referrals from other lawyers.

2. **Describe your typical former clients, and mention the areas, if any, in which you specialized.**

My clients came from every strata of society; some were wealthy, others indigent. I litigated virtually every type of civil and criminal matter.

c. 1. **Did you appear in court regularly, occasionally or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates.**

My entire career was devoted to being a trial lawyer. Following my admission to the bar, there was never a month when I was not required to be in either the state or federal court on some issue which was the subject of litigation.

2. **What percentage of these appearances was in**

(a) **Federal courts.**

60%

(b) **State courts of record.**

35%

(c) **Other courts.**

I spent some time before administrative agencies, such as the Securities & Exchange Commission, the Banking Board, and the Industrial Commission, which would not have exceeded 5% of my practice.

3. **What percentage of your litigation was:**

(a) **Civil.**

65%

(b) **Criminal.**

35%

4. State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

It is difficult to estimate with any accuracy the number of cases that I tried to verdict or judgment. In the last ten years of my practice, I served in most cases as chief counsel. My best estimate as to the number of cases I tried to conclusion before a judge or jury would be between 300 and 400 cases, although the number could be higher.

5. What percentage of these trials was

(a) Jury.

35%

(b) Non-Jury.

65%

18. Litigation: Describe ten of the most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

(a) the date of representation:

(b) the name of the court and the name of the judge before whom the case was litigated, and;

(c) the individual name, addresses and telephone numbers of co-counsel and of counsel for each of the other parties.

It is difficult to single out ten cases which are the most significant when your practice at the trial bar extended over a period of twenty years. Nearly all of the cases that I have summarized were the subject of review by the appellate courts. The ten cases I have selected are:

A. The Denver Post Case

Herald Company v. Bonfils, 315 F. Supp. 497 (D.C. Colo. 1970), *rev'd*, *Herald Company v. Seawell*, 472 F.2d 1081 (10th Cir. 1972)

B. *Smith v. Miller*, 153 Colo. 35, 384 P.2d 738 (1963)

C. *Pearl Alberta v. Kling, Carroll and Stafford*, Denver District Court Civil Action No. B-66117 (1960)

D. *H. Bradley Wolff, Jr. v. H. B. Wolff*, Denver District Court Civil Action Nos. B-35386, B-37440, B-37638, B-37867, B-38006, & B-38007 (1960)

E. *Calvaresi v. United States*, 216 F.2d 891 (10th Cir. 1954), *reversed and remanded for trial before a new and different judge on a petition for certiorari*, 348 U.S. 961 (1955)

F. *Corbett v. People*, 153 Colo. 457, 387 P.2d 409 (1963), *cert. denied*, 377 U.S. 939 (1964)

Corbett v. Patterson, 272 F. Supp. 602 (D. Colo. 1967)

G. *People v. Hammer*, Denver District Court (1966)

H. *Albert Chadez and Wilma Chadez v. Independent Oil and L.P. Gas Co., a Colorado corporation; Laverne Vanderworks; Fruehauf Corporation, a Michigan corporation; Tenneco Oil Company, a Delaware corporation; John Doe and Richard Roe*, Denver District Court Civil Action No. B-66117 (1962)

I. *Carroll v. United States*, 326 F.2d 72 (9th Cir. 1963)

J. *United States v. Handy*, 454 F.2d 885 (9th Cir. 1971), *cert. denied*, 409 U.S. 846 (1972)

18. A. The Denver Post Case

Herald Company v. Bonfils, 315 F. Supp. 497 (D.C. Colo. 1970), rev'd, Herald Company v. Seawell, 472 F.2d 1081 (10th Cir. 1972)

Samuel I. Newhouse, who owns a chain of fifteen metropolitan newspapers, sought to acquire The Denver Post. The Newhouse empire included the ownership of a number of metropolitan daily newspapers, thirty television stations, and a news-gathering distribution service. Newhouse desired to extend his control to The Denver Post.

Helen G. Bonfils made it clear from the outset that The Denver Post was not for sale. Her sister, May Bonfils Stanton, owned approximately 18% of the stock of The Denver Post, Inc. The two sisters were estranged as a result of a will contest. Prior to her death, May Bonfils Stanton sold her stock in The Denver Post, Inc. to The Herald Company, controlled by S. I. Newhouse. Thereafter, to prevent Newhouse from gaining control of The Denver Post, Helen Bonfils acquired 19,574 shares of stock held by Denver-U.S. National Bank, as Trustee for The Children's Hospital Association, to insure that she would have control of the management of The Denver Post. The Children's Hospital stock was labeled "treasury stock" and was retained for use in the creation of The Denver Post Employees Stock Ownership Plan. The Plan, if successful, would eventually lock control of The Denver Post, Inc. in the employees and would preclude S. I. Newhouse from gaining control of The Denver Post.

The transaction with the Denver-U.S. National Bank resulted in a suit by Bruce and Gordon Rippey, who were contingent beneficiaries under two testamentary trusts. The Rippeys contended that the sale was not an arms-length transaction and that Helen Bonfils purchased the stock at a price that was $3,500,000 less than its actual value. A long trial in which I did not participate was concluded with a surcharge judgment being entered against the Denver-U.S. National Bank and Helen Bonfils. See Rippey v. Denver-U.S. National Bank, 260 F. Supp. 704 (D. Colo. 1966). Helen Bonfils paid the judgment in the Rippey case.

Thereafter, The Herald Company, the Newhouse alter ego, brought a shareholders' derivative suit. Holland and Hart, counsel for The Denver Post for several years, and the officers and directors of The Denver Post selected me to be trial counsel in the Newhouse case. Eventually, representation was divided to enable Justice Arthur Goldberg and Jay Topkis of the firm of Paul, Weiss, Goldberg, Rifkin, Wharton & Garrison to appear as counsel for The Denver Post Employees Stock Trust. I assumed the primary obligation of defending Palmer Hoyt, the editor and publisher of The Denver Post, and Helen Bonfils, president and a director of the corporation. Later, Predovich and Ward (727 Thatcher Building, Pueblo, Colorado 81003 (303) 544-5081) were also aligned with me in the defense of Helen Bonfils and Palmer Hoyt. William McClearn of Holland and Hart (555 17th Street, Suite 2900, Denver, Colorado 80202 (303) 295-8238) served as counsel for The Denver Post, Inc. The defense was a team effort which impressed me in demonstrating that many lawyers can work together successfully. Neef, Swanson & Myer served as local counsel for Samuel I. Newhouse. Robert Swanson (1600 Broadway, Suite 600, Denver, Colorado 80202 (303) 830-0500) and Fred Neef (1600 Broadway, Denver, Colorado 80202) divided the responsibility of presenting Newhouse's claims to the court.

The complaint charged misconduct in the operation of The Denver Post, Inc., breach of trust by management, and misuse of corporate assets by the directors and officers of The Denver Post, Inc. The thrust of the plaintiff's allegations was that the defendants had conspired to acquire sufficient stock in The Denver Post, Inc. to vest voting control in Helen G. Bonfils, through her trusts, foundations, and associates.

Chief Judge Alfred A. Arraj requested that Sherman Christensen, United States District Judge from Utah, accept responsibility for the trial of the case. At our first meeting, Judge Christensen designated Robert Swanson as liaison counsel for the plaintiff and named me as liaison counsel for all defendants. After outlining the manner in which motions would be dealt with, he set forth the discovery procedures that would be followed and provided for pretrial procedures that shortened the time requirement for trial. It was necessary for counsel for both sides to submit a comprehensive Brandeis-type brief to the court with proposed findings of fact and conclusions of law prior to trial. The pretrial conference resulted in the admission of more than one thousand exhibits.

The opinions paint a fair portrait of the facts and issues. Judge Christensen ruled in favor of The Herald Company. However, the Bonfils' interest was soundly vindicated in the United States Court of Appeals for the Tenth Circuit. I shared responsibility for the loss and can claim no part of the victory in the court of appeals since the decision followed my appointment to the Colorado Supreme Court.

In hindsight, The Denver Post case was significant in that the efforts employed by Helen Bonfils to acquire the Children's Hospital stock represented a classic example of overreaching. In her efforts to keep S. I. Newhouse from gaining control over The Denver Post, Helen Bonfils was determined to do anything and everything that was necessary to maintain a majority stock interest. Her mistakes were costly, but in the end, Newhouse sold his stock to The Denver Post, Inc., making The Denver Post Employees Stock Trust and control of The Denver Post by its employees a reality. Since that time, The Denver Post has been sold twice. Only a few of the employees who were there in 1970 are there today and the Denver Post Employees Stock Trust did not result in the employees owning The Denver Post.

18. B. Smith v. Miller, 153 Colo. 35, 384 P.2d 738 (1963).

Jim R. Carrigan, who was a forceful trial lawyer and is now a federal district judge, had just finished his assignment as Court Administrator for the State of Colorado and was teaching law school. He had been associated with Hindry, Erickson & Meyer for a brief period of time, and we became close friends before he left the firm. When the judges of El Paso County, Colorado contacted him, he asked me to join him in the preparation and trial of the judges' case. We shared all burdens of the trial equally. Since that time we have served together on the Colorado Supreme Court.

When Smith v. Miller was tried before Judge John Mabry, the county and the district courts depended on the county commissioners for operating funds. Subsequent to the trial of Smith v. Miller, and the amendment of the Colorado Constitution to provide for a unified court system, legislation was enacted that fixed the salaries of clerks on a state-wide basis. In my view, the decision in Smith v. Miller was one of the forces that brought about the change. At the time the case was tried, state judges in nearly every county were having trouble getting personnel, and the salary for the clerks was different in every county.

One of the difficulties that we faced was County Commissioners v. Morning, 72 Colo. 200, 210 P. 326 (1922). The county commissioners relied on the Morning case for the proposition that after the judges set the salary for their personnel, the county commissioners had to approve the salary or the salary remained at the level where it was last agreed upon by the judges and the commissioners. The judges of El Paso County were totally unwilling to subject the clerks and other judicial employees to the salary scale which the county commissioners were prepared to approve. The primary issue was whether the county commissioners or the judges were going to manage the courts. The case was a real challenge, and both Jim Carrigan and I are proud of the victory that we obtained for the courts. The case is significant for its resolution of the separation of powers issue, and the development of the law on inherent power of the court to carry out its necessary functions. Judge Carrigan's address is United States District Court, 1929 Stout Street, No. C-529, Denver, Colorado 80294 (303) 844-3157.

18. C. Pearl Alberta v. Kling, Carroll and Stafford, Denver District Court Civil Action No. B-66117 (1960)

In June 1958, two automobiles crashed violently in a head-on collision. The occupants of both automobiles suffered grievous injuries which brought about protracted litigation. The plaintiff's automobile was driven by Robert L. Zeigler, and Ruth Emma Baer and Pearl Alberta were passengers. The defendant, Donald E. Kling, driving an automobile owned by John W. Stafford, was taking Raymond Carroll home. Carroll, Stafford, and Kling were engaged in the home improvement business. After a night on the town, Stafford allowed Kling to use his automobile to take Carroll home. Stafford was let out at his home, and Kling and Carroll drove on. Both Kling and Carroll were highly intoxicated when the collision occurred shortly thereafter.

I represented Pearl Alberta, who was one of the plaintiffs in the subsequent lawsuit. Because of the extremely serious personal injuries sustained by the three plaintiffs, they were awarded judgments that exceeded any previous awards in Colorado. To avoid a claim in excess of policy limits, Stafford's insurance carrier paid their policy limits into the Registry of the Court on the day that the trial commenced. Unfortunately, the limits of the policy satisfied only a small portion of the judgments that the court eventually entered in favor of the plaintiffs, and an amount in excess of $100,000 was unsatisfied on the collective judgments.

Carroll, the passenger in the Stafford vehicle, owned an automobile and carried a standard automobile liability policy with the American Employers Insurance Company. This policy contained the then-standard clause relating to non-owned automobiles. This clause protected the insured against liability arising out of the use of a non-owned automobile. The driver, Kling, had no policy of his own. The plaintiffs theorized that Carroll, even though a passed-out, drunk passenger, was, in effect, using the Stafford automobile at the time the collision occurred. Carroll's use of the car was premised upon the fact that the car was being used to transport him to his home. The success of this argument resulted in the availability of the benefits of Carroll's automobile insurance policy for the purposes of satisfying the judgment against the defendants.

The issues were framed in a garnishment proceeding in the Denver District Court before Judge Robert H. McWilliams, who is now a senior judge on the United States Court of Appeals for the Tenth Circuit. Our garnishment action was upheld, and the case was appealed to the Colorado Supreme Court. Settlement occurred without discount just prior to oral argument in the appellate court.

18. D. H. Bradley Wolff, Jr. v. H. B. Wolff, Denver District Court Civil Action Nos. B-35386, B-37440, B-37638, B-37867, B-38006, & B-38007 (1960)

The original caption, which was two-and-one-half pages long, indicated six cases and a number of parties. In actuality, the controversy was between a father and son. I represented the father, H. B. Wolff.

H. B. Wolff had been an extremely successful real estate man who eventually commenced a series of medium-to-low-cost home building projects on land surrounding Denver and in some undeveloped areas in Denver. He had built over 500 homes. When his son, H. Bradley Wolff graduated from college he went to work for his father. To provide tax shelters, his father formed a number of different corporations and usually divided the stock equally with his son. As business continued to expand, the son concluded that it was time that he took over the business, and attempted to force his father into retirement. When the father refused, the son asked for 50% of the assets of the companies so that he could commence his own building company, which resulted in the litigation.

Eventually, other cases were filed by the father against the son and by the son against the father. Both father and son were determined to tie up all the assets they could to force capitulation. Many of the homes that had been built were ready for sale and could not be sold because of a lis pendens which the son had put on all of the property that his father or any of the companies owned. In the various suits, the son attempted to obtain injunctive relief, a receivership, and an accounting. He also attempted to force the dissolution of the companies under a statutory provision in Colorado which permits dissolution when an equal division of stock and a disagreement between the shareholders prevents agreement in the operation of the corporation for a period of years. In addition, he alleged corporate mismanagement and waste, and sought the broadest equitable relief.

The stockholders' meetings, which were held throughout the period, were hotly contested. Both father and son were forcing bankruptcy upon each other. All of the homes which were ready for sale could not be sold because no local title insurance company would provide title insurance.

When the case went to trial, the validity of nearly every directors' meeting and stockholders' meeting was in issue. After a long trial, the court dismissed the complaints filed by H. Bradley Wolff. The case was immediately appealed to the Supreme Court. Pending resolution on appeal, the lis pendens was in effect, causing our victory in the trial court of be of little value. The inventory of finished houses could not be sold. All title insurance companies in Denver refused to accept the risk of providing title insurance. Fortunately, I was able to persuade the Clint Murchison interest in Dallas, Texas, to insure the titles through one their companies after I reviewed the cases with them. Murchison was looking for an opportunity to establish a title insurance company in Colorado and provided the policies, which were guaranteed by the father. The lawsuit was settled shortly thereafter and was never resolved by the Supreme Court of Colorado.

The significance of the case is that a lis pendens, which may be filed without a hearing or bond, may be more effective than attachment or garnishment proceedings when a land development company is the defendant.

The trial judge was Judge Robert H. McWilliams, who is a senior judge on the United States Court of Appeals for the Tenth Circuit.

My primary adversary was Howard K. Phillips, who was the Clerk of the United States Court of Appeals for the Tenth Circuit until he retired.

18. E. Calvaresi v. United States, 216 F.2d 891 (10th Cir. 1954), rev'd and remanded for trial before a new and different judge on a petition for certiorari, 384 U.S. 961 (1955).

Eugene and Clyde Smaldone were reputedly connected with organized crime. Their records reflected numerous violations of the gambling laws and the commission of some other offenses as well. In 1953, Eugene was charged with tax evasion. He and his brother attempted to insure a favorable jury verdict by encouraging relatives and friends to contact and influence various members of the jury panel.

One of the jurors reported the matter to the Honorable Willis W. Ritter, a United States District Judge from Utah, who was assigned to the Smaldone tax evasion case. Judge Ritter requested that the Federal Bureau of Investigation make an inquiry into the jury tampering charges. The Department of Justice, however, declined to intervene as long as the jury was a "live" jury and ordered the Treasury Department to conduct the investigation.

The investigation provided a Grand Jury with evidence that brought about multiple indictments against a number of defendants. William Calvaresi was one of the first to be indicted. He was the next door neighbor of Effie B. Alsup and the one that triggered the conspiracy to obstruct the due administration of justice (18 U.S.C. § 371, 18 U.S.C. § 1503). Calvaresi, who had no previous criminal recc talked to Mrs. Alsup about her jury service on the Smaldone case. Following the first Grand Jury indictment, a number of other indictments were returned, all relating to the one conversation which he had with Mrs. Alsup.

A distant cousin of the Smaldones, Jerry Benallo, was also indicted for his part in the conspiracy.

Both Calvaresi and Benallo were charged with the substantive offenses of bribery (18 U.S.C. § 206) and obstruction of the due administration of justice (18 U.S.C. § 1503). In addition, conspiracies to violate both statutes were charged (18 U.S.C. § 371). With each new discovery of attempts by others to bribe or influence jurors, new conspiracy indictments were returned which included all of the overt acts in the first indictment plus a new defendant and an additional overt act.

The result was that there were multiple indictments and bail was set at over $1,000,000 for Calvaresi and Benallo. Calvaresi and Benallo called upon their family attorney, Albert E. Sherlock, for assistance, and he called my father. As a result, I obtained the opportunity to participate in my first major case.

The Smaldone case was the news story of the year. Trial occurred within weeks after the indictments were returned in the fall of 1953. The jury convicted all the defendants of all charged offenses. Calvaresi and Benallo, as well as the Smaldones, were sentenced to long terms in the penitentiary and given consecutive sentences of the same duration for contempt of court.

When the case was argued in the Court of Appeals, I was selected by the defense lawyers to make the principal argument. My former colleague on the Supreme Court, Justice Donald E. Kelley, had replaced Charles S. Vigil as United States Attorney and appeared with James Heyer for the government. The court of appeals reversed the convictions in part and affirmed in part. Calvaresi v. United States, 216 F.2d 891 (10th Cir. 1954).

In the Supreme Court of the United States, we obtained reversal on certiorari. I wrote the petitions for Calvaresi and Benallo, Peyton Ford and Alan Cole prepared the petitions for the Smaldones. The reversal read:

> "Per curiam: In the interests of justice and in the exercise of the supervisory powers of this Court, certiorari is granted and the cases are severally reversed and remanded to the District Court for retrial before a different judge."

Following the trial of the case, a Senate investigation was conducted when President Eisenhower fired Charles S. Vigil, the United States Attorney who tried the Smaldone cases. Warren Olney III, who was the Assistant Attorney General in charge of the Criminal Division of the Justice Department, testified as to the reasons the Federal Bureau of Investigation refused to investigate the case. Charles S. Vigil and Judge Ritter both testified, and Senator Herman Welker of Idaho reviewed some of the problems which were before the Senate when Judge Ritter was confirmed by a narrow margin. The investigation was headed by Senator William Langer of North Dakota, and included Senator Carey Estes Kefauver of Tennessee, Senator Herman Welker of Idaho, Senator John Marshall Butler of Maryland, and Senator Eugene Milliken of Colorado.

The attorneys who participated in the trial included some of Colorado's most distinguished trial lawyers:

Frederick E. Dickerson was the dean of the criminal defense bar and became a close friend as a result of the trial.

Thomas J. Morrissey, a former United States Attorney and a partner of Frederick E. Dickerson, predeceased his partner.

William Francis Dwyer, another partner of Frederick E. Dickerson, became a member of the Colorado Court of Appeals before his death. He was my closest friend and joined me in the trial of approximately twenty cases.

Anthony F. Zarlengo and I argued the case in the United States Court of Appeals for the Tenth Circuit. Following the Smaldone case, we tried many cases together as co-counsel and never lost a case which we tried together until the Kolowich case. He is the sole survivor of the firm of Dickerson, Morrissey, Zarlengo & Dwyer. His office address is 303 E. Seventeenth Avenue, Suite 700, Denver, Colorado 80203, (303) 861-4071.

Albert E. Sherlock, who caused me to be involved in a number of important cases, died several years ago.

William L. Rice is now semi-retired. He was a great trial lawyer and former district attorney. His current address is 110 Sixteenth Street, Suite 755, Denver, Colorado 80202, (303) 534-7601.

Francis Mancini has long since given up trial work, but he continues to practice in Denver. His address is 1050 Seventeenth Street, Suite 2480, Denver, Colorado 80265, (303) 571-5302.

Charles S. Vigil, after his removal as United States Attorney, commenced a private practice in Denver and Trinidad. His Denver office address is 225 East Sixteenth Avenue, Suite 465, Denver, Colorado 80203, (303) 861-4200.

Donald E. Kelley, served on the Colorado Supreme Court, is now retired, and resides at 3144 South Columbine St., Denver, Colorado.

James W. Heyer, an Assistant United States Attorney, had a disappointing law practice, problems with the Grievance Committee, and gave up his practice to assume a job as corporate counsel. His address is 3761 South Rosemary Way, Denver, Colorado 80237, (303) 773-1199.

Peyton Ford, who is deceased, was the former Attorney General for the Criminal Division and represented the Smaldones in the Supreme Court of the United States.

Alan Y. Cole and I wrote the petitions for certiorari that brought about reversal. Alan Cole is deceased.

My father, A. X. Erickson, died in 1968.

18. F. Corbett v. Patterson, 272 F. Supp. 602 (D. Colo. 1967).

On February 9, 1960, Adolph Coors III disappeared on his way to the Coors Brewery. His international Travel-All Station wagon was found with the motor running at the Turkey Creek bridge just outside of Morrison, Colorado. A milkman who was making a delivery had to move the International Travel-All to cross the bridge. He immediately notified the State Patrol. The Coors Brewery officials were notified and Joe and Bill Coors reported that their brother, Ad Coors III, was late for a directors' meeting.

The largest manhunt in the history of Colorado commenced. First, the Jefferson County Sheriff's Office undertook the investigation alone. At the end of the twenty-four hours, the Federal Bureau of Investigation came into the case under the presumption of interstate kidnapping, which is permitted under the Lindbergh Act.

Shortly after the disappearance of Ad Coors III, a ransom note was received. Joseph Corbett, Jr., alias Walter Osborne, was made the target of the investigation and a world-wide search was started for him. The disappearance of Ad Coors III, the oldest of the Coors brothers and the principal executive at the Coors Brewery, was the news story of the year for 1960. The second-most noteworthy news story, in the opinion of the local news media, was the arrest of Joseph Corbett in Vancouver, British Columbia, in October of 1960.

Following Corbett's arrest, Corbett's father attempted to retain me. My partners directed that I decline because many of our clients were close friends of the Coors family. H. Malcolm Mackay was retained, and when funds became unavailable to properly prepare the case, he sought to withdraw. Judge Arraj appointed him to the case and asked him to select the lawyer he wanted to serve with him as trial counsel. I was appointed as counsel for Corbett.

The publicity surrounding the case was incredible. Even a university student attempting to obtain affidavits to accompany our motion for change of venue was threatened and assaulted. The change of venue issue had such merit, in my opinion, that reversal would be all but automatic. The fair trial and free press issue generated by the *Corbett* case reached the Supreme Court of the United States on certiorari three years before *Sheppard v. Maxwell*, 384 U.S. 333 (1966). Certiorari was denied, although many facts in the *Sheppard* case parallel, or are not as compelling as they were in the *Corbett* case.

The Coors family is highly respected in Jefferson County and responsible for employing more Jefferson County residents than any other business in the county. The change of venue motion was aggravated by the action of the district attorney, Barney O'Kane. He delivered to *The Denver Post* the entire Federal Bureau of Investigation report which was thereafter published in full. The report contained a number of evidentiary items that were inadmissible in evidence and were never offered at the time of trial.

An indication of the emotions invoked by the case was reflected by some of our clients seeking other counsel because of my representation of Corbett.

The web of circumstantial evidence put together by the Federal Bureau of Investigation included testimony of experts in the field of soil ballistics, blood samples, and firearms. The legal questions, apart from the issue of change in venue, were all thorny and a great percentage of the issues which were raised have subsequently become the law of Colorado.

Corbett v. People, 153 Colo. 457, 387 P.2d 409 (1963), cert. denied, 377 U.S. 939 (1964), with its sequela on habeas corpus in the federal court, Corbett v. Patterson, 272 F. Supp. 602 (D. Colo. 1967), analyzes the problems that were tied to the trial of this case.

The pervasive publicity which surrounded the case, in my opinion, dictated the jury's verdict. To support my opinion, I point to the case of People v. Shanks, 153 Colo. 332, 385 P.2d 990 (1963), which was tried in the same county, by the same judge, and the same district attorney. I served as the primary defense lawyer in both cases. The evidence in the Shanks case was all but identical to the evidence in the Corbett case. The F.B.I. assisted in both cases in the presentation of expert testimony on soil samples, blood tests, and ballistics. In fact the evidence of guilt in Shanks was more cogent and convincing than it was in the Corbett case. However, the victim in the Shanks case was a gambler known as "Walkie-Talkie" Roberts and not the county's primary benefactor. Shanks was acquitted by a jury.

The same bail issue was before the Supreme Court of Colorado in the Shanks case as was presented earlier in the Corbett case. Relief was granted in Shanks, but not in Corbett.

H. Malcolm Mackay, my co-counsel in the Corbett case, is deceased.

Barney O'Kane, the District Attorney who released the F.B.I. report in the Corbett case to the news media, is now engaged in private practice in Lakewood, Colorado. His address is 1480 Hoyt, #21, Lakewood, Colorado 80215 (303) 237-0416.

Ronald Hardesty, the District Attorney who tried the case, retired as a district judge and is now serving on the Colorado Supreme Court Senior Judges Program. His address is 2478 Hearth Drive, Evergreen, Colorado 80439 (303) 674-4886.

18. G. People v. Hammer, Denver District Court (1966)

Possibly the most well-documented case that I ever tried was People v. Hammer, a murder case in the District Court for the City and County of Denver.

The United States Information Agency (USIA) desired to publish a series of articles describing the criminal justice system in the United States. The articles were intended to emphasize the procedures and the constitutional protections afforded to a defendant from the time of arrest to the beginning of the corrections phase of the case. To insure accuracy, the USIA thought it necessary to photograph an actual proceeding. At the time, Colorado was one of two states permitting photographs in the courtroom. Judge Mitchell B. Johns of the Denver District Court was contacted for a recommendation of a suitable upcoming case. He selected Hammer.

Terry Fiske and I were appointed to defend Glenn Hammer, an indigent. Since both the defendant and the court must consent to photography in the courtroom, we conferred with Hammer and explained the risks of having photographers in the courtroom. Hammer concluded that cameras should be permitted in the courtroom.

Every effort was made to avoid any distortion of the impartial courtroom atmosphere by the photographers. The court set certain ground rules that were scrupulously followed. The jury was advised that the purpose of the photography was to prepare an article for foreign distribution by the USIA. It was carefully instructed that the jury should disregard the photographer's presence in its deliberations. The local news media had no interest in the case. To the best of my knowledge, no more than twenty lines appeared in the local newspaper after Hammer was acquitted.

The Hammer case was a death penalty murder case with reliable evidence of Hammer's premeditation and intent to kill the victim, Reeves. Efforts to negotiate a plea to manslaughter were rejected by the district attorney. The defendant's theory of the case was "self-defense."

Hammer lived in the Workman's Hotel, managed by Mrs. Reeves, who was separated from her husband. The husband came to the hotel and became embroiled in a fiery argument with Mrs. Reeves, threatening Hammer and some other occupants with rifle. When Hammer heard Mrs. Reeves scream in another room, he rushed to her rescue with a revolver. The husband came to the door when Hammer knocked, and violent words were exchanged. Mr. Reeves, who was nearly twice the size of Hammer, made a threatening gesture, and Hammer shot Reeves twice in the stomach. He then rolled Reeves over and shot him twice in the back of the head.

The case was of primary interest because of the question relating to the effect of the photographer on the jurors during the trial and in their subsequent deliberations. The jurors, in my opinion, knowing that the article was to be distributed to persons behind the Iron Curtain to show how a trial was conducted in the United States, tended to offer Hammer more protection than the facts and the law dictated. Versions of the article documenting the Hammer case were published in English, Russian, Hungarian, French, and Spanish.

The chief prosecutor in the case, Deputy District Attorney Gilbert Alexander, is now a retired Denver District Court Judge. His assistant, Gilbert Medina, is now practicing law in Denver (1940 West Mississippi Avenue, Denver, Colorado 80223).

My assistant, Terry Fiske, is a partner in the Denver law firm of Davis, Graham & Stubbs, 303 17th Street, #4700, Denver, Colorado 80202 (303) 892-9400, and served as Deputy Solicitor for the Department of Interior.

Richard Schmidt, former head of the United States Information Agency, who caused the article to be written and circulated in Europe, is a former Denver lawyer and now practices law in Washington, D.C. with Cohn & Marks. He specializes in law and the media, and was one of the lawyers who recommended me to The Denver Post as a trial lawyer when the Newhouse suit was filed.

18. H. Albert Chadez and Wilma Chadez v. Independent Oil and L.P. Gas Co., a Colorado corporation; Laverne Vanderworks; Fruehauf Corporation, a Michigan corporation; Tenneco Oil Company, a Delaware corporation; John Doe and Richard Roe, Denver District Court Civil Action No. B-66117 (1962)

On November 15, 1972, the Chadez family, consisting of Albert, his wife, Wilma, and their adopted daughter, Teresa, was on its way back to Denver from Glenwood

Springs, Colorado. Teresa Chadez was three-years old. The Chadez family had been swimming at Glenwood Springs, Colorado, just prior to the holocaust which occurred at Downieville, Colorado.

While going over the mountain passes, the Chadez family encountered fog that was so dense it was necessary to stop the car. Albert Chadez was a switchman for the Denver & Rio Grande Railroad. He got out when he could not see the road, got his switchman's lantern, and tried to find out where his car was located with respect to the road to determine a place where they could stop safely. He heard a noise which sounded like running water. Suddenly, everything was on fire.

Propane gas created the fog and caused the explosion. Tanks of the Independent Oil and L.P. Gas Company at Downieville were being refilled by a semi-trailer that was owned by Laverne Vanderworks and leased to the Independent Oil and L.P. Gas Company. Propane gas was discharged from both tanks and the trailer. Laverne Vanderworks, who was attempting to discharge his cargo of propane into the tanks, as well as the Chadez family, suffered massive burns in the fire or explosion.

The propane that was being unloaded had been acquired at the Tenneco Oil Company refinery. Vanderworks, more than a month before the explosion occurred, had obtained another load of propane at the Tenneco refinery. In the course of the loading operation, his trailer was contaminated when a screen broke and caused alumina (a drying agent) to enter his semi-trailer tank truck, clogging the discharge valves. The trailer was taken to the Fruehauf Corporation for repairs. Apparently, the repairs were not completed properly.

Our investigation established that Vanderworks had left the loading site to get a cup of coffee. He rushed back when he found that the gas was escaping to close the valves.

Propane is heavier than air, and as a result, the cloud that covered the road served as a trap for any motorist that was using the interstate highway. The Chadez family were the only victims.

The injuries suffered by the Chadez family defy description. Albert Chadez suffered burns over the greater portion of his body and required some skin grafting. Wilma Chadez suffered third-degree burns over 40% of her body. The burns Teresa Chadez incurred caused her death within days. The injuries to Wilma Chadez required skin grafting and extensive plastic surgery on five different occasions. Even after surgery, she was disfigured and deformed. Her hands were like hooks after the best medical efforts had been completed to cause rehabilitation.

Shortly after the explosion occurred, I was called by Warren Turner, the Chadez family attorney, and asked to serve as trial counsel. Our investigation established the liability of all the defendants. In discovery and pretrial preparation, each defendant sought to prove that the other was responsible for the explosion. As a result, we were able to buttress liability of each of the defendants and to make all defendants liable as joint tortfeasors.

Experts in trial explosion cases were imported for the trial. Trial commenced, and just after the opening statement was concluded, the defendants together provided the funds for settlement.

The case is significant because of the difficulty in establishing the liability of each of a number of joint tortfeasors, and in showing that each joint tortfeasors was a proximate cause of the explosion.

The Pan American Insurance Company insures many of the butane and propane businesses throughout the United States. The Pan America Insurance Company was represented at the time of trial by the late Duke Duvall of Oklahoma City, who was an expert in explosion cases, and by the late Joseph Lilly, who later became a Denver District Judge. Following the Chadez case, I was retained by the Pan American Insurance Company to represent it in its Colorado litigation. I defended a number of explosion cases for the company and was consulted by it on explosion cases in other states.

Subsequent to, and because of the Chadez case, I was counsel for Carolyn Mignone Chapman and Robert L. Chapman in 1966. The Chapmans retained me to bring suit in the United States District Court for Colorado against Breckenridge Lands, Inc., the owner; Bruce Sutherland, the architect; Donald L. Anderson, Inc., the contractor; National Plumbing Company, the plumbing and heating contractor; and Home Gas and Appliance Company, the entity that installed the propane system.

Again, a propane gas explosion was the basis for the litigation. The interrelated causes for the explosion were more complex than those encountered in the Chadez case. The explosion occurred in the "Ullrhom" (operations building), a semi-completed building that was owned by Breckenridge Lands, Inc., the developers of the Breckenridge ski area.

Carolyn Mignone Chapman was in the building, buried alive in the explosion, and was severely injured. Again, we had the question of proving the liability of a number of defendants who had different responsibilities for building and occupation of the "Ullrhom." Once again, we were able to establish the liability of all defendants by causing each defendant to blame the other for the explosion.

Both the Chadez and Chapman cases were simplified by discovery and extended pretrial conferences. The Chapman case was also settled after liability was established and trial had commenced.

18. I. Carroll v. United States, 326 F.2d 72 (9th Cir. 1963)

The Carroll case involved alleged violations of section 17(a) of the Securities Act of 1933 (15 U.S.C. § 77q(a)). The strength of the prosecution's case was largely dependent upon their interpretation of the Federal Business Records as Evidence Act, 28 U.S.C. § 1732. The case was tried before a jury, and the Honorable Charles H. Carr, a judge on the United States District Court in California. After Carroll's conviction, an appeal was pursued in the Ninth Circuit Court of Appeals. The court of appeals opinion reflects the fact that Judge Carr actively participated in the examination of witnesses and laid the foundation for the admission of some key prosecution exhibits. The evidence of guilt, unfortunately, was overwhelming. Once the controversial business records were admitted under the Business Records as Evidence Act, the jury's verdict was anti-climactic.

One distinguishing feature of this case involved the pretrial preparation and the steps that we took to prevent perjured testimony from being presented to the court and jury. I arrived in Los Angeles at 10:00 p.m. to assume duties as trial counsel. I was introduced to Robert Laska, a former salesman for the defendant, Carroll & Company. Laska's responses to certain questions I posed all but assured an early conviction of Harold Carroll. His responses were more than discouraging. The next morning, my client informed me that Laska had told him he would testify favorably for $5,000. I had never contemplated the possibility of perjury or subornation of perjury when I interviewed Laska.

I advised Carroll to obtain a small tape recorder and to get Laska to repeat his offer. Carroll obtained a recorder, and the offer was repeated and recorded. I notified the United States Attorney and the trial judge of the offer to commit perjury. The Federal Bureau of Investigation was called in, and Carroll cooperated in every way. Carroll was provided with a body mike and an envelope which was treated with radio-active dust. An exchange was arranged at a nearby filling station where the service men and mechanics were undercover F.B.I. agents. Carroll tendered the envelope to Laska, Laska agreed to cooperate, and an arrest was made.

From the standpoint of pretrial preparation, this presented an unexpected and unusual attempt to obstruct the administration of justice. The attempt, however, did not delay the trial and proceeded on schedule. The primary issue related to the admissibility of business records. The opinion of the Ninth Circuit reflects how far the trial judge interjected himself into the trial of the case. Both the prosecution and defense were under continuous attack by the trial judge from the beginning of the case until the case was concluded with the imposition of a probationary sentence.

I tried the case and was assisted by C. Henry Roath, who is now partner at Roath and Brega, P.C. 370 17th Street, Suite 800, Denver, Colorado 80202 (303) 893-5800. The case was prosecuted by Francis C. Whelan, Thomas R. Sheridan, and John A. Mitchell of the United States Attorney's office for Los Angeles. Mitchell is now practicing law in San Diego.

18. J. United States v. Handy, 454 F.2d 885 (9th Cir. 1971), cert. denied, 409 U.S. 846 (1972).

One of the most obdurate and difficult clients I ever served was C. John Handy. He had become a pseudo tax expert, and at one time maintained a firm that prepared income tax returns. Eventually, he became involved in business, and the complex plan that he put together amounted to nothing more than a method for accomplishing tax evasion.

Handy attended institutes all over the United States on the defense of white-collar crimes. He apparently knew that he was going to be indicted for tax evasion and was shopping for a lawyer. He attended a Practising Law Institute Seminar in New York City devoted to the defense of white-collar crimes. I was one of the lecturers at the seminar, and was later contacted by Handy after he had made a thorough investigation of my background and experience. He obtained a copy of a training film that was made by the Roscoe Pound Foundation on the art of cross-examination and the techniques of cross-examination. The Roscoe Pound Foundation had made a series of vignettes on the trial of criminal cases and had me demonstrate the cross-examination phase of the trial. He then interviewed a number of my clients and eventually hired me as his trial counsel.

He was represented locally by Richard G. Sherman of Beverly Hills, California, and just prior to trial, he also hired Jonathan E. Johnson of Los Angeles as a consultant on the insanity defense to an income tax charge.

I was warned by the Assistant United States Attorney, Dennis Kinnard, of the problems that I could anticipate. His predictions not only materialized, but multiplied. Handy insisted on quarterbacking the defense of his case, editing every motion that I prepared. I attempted to withdraw and ended up irrevocably saddled with the trial of a difficult case.

The trial judge that inherited this case was Harry Pregerson. In my opinion, Judge Pregerson is one of the finest trial judges that I have ever appeared before. His patience astounded me. When the trial commenced, Handy continued to submit motions to me for filing. Most of the motions were frivolous. As a result, I declined to file the motions. At first, Judge Pregerson permitted Handy to file the motions on his own behalf and without the signature of counsel. Handy kept filing more and more motions, and the briefs became more extended. Finally, the judge ordered that no motion or brief be filed without my signature.

Handy was made aware of his role in the case, and the trial went forward with not more than one new motion on each succeeding day.

The trial was hotly contested and maintaining control over the litigation was extremely difficult. The psychiatric testimony and Handy's actions reflected his need of treatment. The case involved several hundred exhibits and was well tried by both sides. When closing arguments were concluded and the record, I thought, was closed, I returned to Denver to satisfy another court commitment. The next day, the jury became deadlocked, and Handy and Johnson consented to the giving of the Allen charge. A verdict of guilty followed shortly thereafter.

Following his conviction, Judge Pregerson sent Handy to the government hospital at Springfield, Missouri for evaluation. Handy eventually got the psychiatric treatment which he required.

In United States v. Handy, 454 F.2d 885 (9th Cir. 1971), the Ninth Circuit decided the case on appeal after I had assumed the duties of a Supreme Court Justice. Judge Harry Pregerson is now a judge on the Ninth Circuit.

19. **Legal Activities: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived).**

A. American Bar Association Standing Committee on Standards for Criminal Justice

Until 1986, I served as Chairman of the American Bar Association Standing Committee on Standards for Criminal Justice. I was Chairman when the second edition was revised in 1983. I was active in the preparation of the Standards for more than twenty years and served with the late Justice Tom C. Clark as Co-Chairman of the Committee to Implement the Standards.

I assisted the Special Committee in the following activities: (1) negotiating with the American Bar Foundation to undertake and coordinate a variety of research functions designated to provide a continuous flow of empirical and other data to the Special Committee to help monitor and update the Standards; (2) coordinating the ABA Standards with the

Commissioners on Uniform State Laws and the LEAA Criminal Justice Standards and Goals, to help criminal justice planners at state and local levels deal with any confusion created by seemingly competitive sets of guidelines and standards; (3) assessing the need for additional standards to fill gaps in other areas of the criminal justice system; (4) considering possible conflicts between the ABA Standards and other guidelines, such as the Uniform Rules of Criminal Procedure, the Federal Rules of Criminal Procedure, and the American Law Institute's Model Code of Pre-Arraignment Procedure, thus lending guidance to federal, state, and local units of government in their criminal justice planning; (5) evaluating areas of controversy within the Standards, such as plea bargaining, and recommending strategies for handling them; and (6) identifying areas in the ABA Code of Professional Responsibility that needed amendment to articulate some of the ethical problem areas covered by the ABA Prosecution Function and Defense Function Standard.

The Standards have been cited in approximately 10,000 appellate decisions and I arranged that they be included in the Shepards citator. The Standards are, in my opinion, the most comprehensive work that has ever been prepared to address the major issues in the criminal justice system.

My last contribution was to assist in drafting Standards for non-responsibility for crime based on mental illness. The American Bar Association Mental Health Standards should avoid the procedural issues that surfaced in the Hinckley case. Our committee also recommended elimination of the irresistible impulse test because no psychiatrist could predict with any certainty whether the criminal act was precipitated by a mental condition that caused an irresistible impulse.

Finally, I have published a number of articles in this area. See Monitoring and Updating the ABA Standards: The Continuing Responsibility, 12 Am. Crim. L. Rev. 469 (1975) (co-authored with Judge William Jameson); The ABA Standards: An Overview, 12 Am. Crim. L. Rev. 277 (1975); The Standards of Criminal Justice in a Nutshell, 32 La. L. Rev. 369 (1972) (reprinted in the Pa. Bar A. Q. (1972)); ABA Standards for Criminal Justice: A Treasure-Trove for Bar Leaders (first in a series of bar activation monographs published by the Division of Bar Services).

B. American Bar Association Action Commission to Reduce Court Costs and Delay

Between 1979 and 1984, I was a member of the American Bar Association Action Commission to Reduce Court Costs and Delay. The commission endeavored to mobilize the bar and bench to reduce costs and delay in litigation and alternate dispute resolution for ordinary people with mid-range monetary claims. We selected three promising models for expediting litigation: simplification of the pretrial phase, where the majority of civil cases are concluded; shortening the time consumed by appeals; and using telephone conferencing in lieu of court appearances whenever feasible. We found a number of jurisdictions that were willing to implement these models and cooperate with us in monitoring their results in cost and delay reduction. In that process we studied the factors that make a program work in one jurisdiction and fail in another.

In 1984, the commission published a report entitled, Attacking Litigation Costs and Delay, which chronicled the commission's work, its successes and failures, and its recommendations for change.

I have published two articles relating to this subject. See The Pound Conference Recommendations: A Blueprint for the Justice System in the Twenty-First Century, 76 F.D.R. 277 (1978); Responses of the American Bar Association, in New Directions in the Administration of Justice: Responses to the Pound Conference, 64 A.B.A. J. 48 (1978).

C. The National Commission for Review of Federal and State Laws Relating to Wiretapping and Electronic Surveillance.

In July 1974, I was appointed by former President Nixon as Chair~~man of~~ the National Commission for Review of Federal and State Laws Relating to Wiretapping and Electronic Surveillance. The Commission was composed of fifteen members; eight members of Congress (four from the House of Representative and four from the Senate) and seven public members. The Commission was named in accordance with the Congressional mandate to conduct an investigation and prepare a report for the President and for Congress. The law creating the Commission directed it "to conduct a comprehensive study and review of the operation of the provisions of the wiretapping statute [18 U.S.C. 2510-20] to determine the effectiveness of such provisions during the six-year period immediately following the date of their enactment."

The Commission held a number of hearings and conducted field investigations throughout the United States. Our report, prepared in accordance with the provisions of Section 804 of Public Law No. 351, 90th Congress [Omnibus Crime Control and Safe Streets Act of 1968, as amended by Section 20 of Public Law No. 609, 93rd Congress] was filed with the President, the President of the Senate, and the Speaker of the House of Representatives on April 30, 1976.

D. Representation of John M. King of King Resources Co.

I was retained by John M. King to evaluate a claim and to possibly sue the Rocky Mountain News for libel for a series of feature articles on John M. King, King Resources Co., and a number of subsidiary companies. John M. King was reputedly worth over $150,000,000 at the time the articles were published. He contended that the articles brought about his downfall and he eventually filed for bankruptcy. Louis Nizer of the New York bar and I served as counsel and, after a thorough and complete investigation, concluded that John King himself had provided the information to the Rocky Mountain News by talking over the mobile phone in his limousine. All of the articles were reviewed and found to be substantially accurate. King finally recognized that a mobile phone is essentially a party line and accepted our conclusion that he had no cognizable libel claim against the Rocky Mountain News. As a result, no suit was filed.

Until I became a member of the Supreme Court, I assisted John M. King in having his companies change policies so as to comply with the security laws. After I went on the bench, he was indicted, convicted, and sentenced to confinement. His bankruptcy was concluded less than a year ago. The complex legal problems which we confronted provided as great a challenge as any lawyer could address. Unfortunately, our efforts to save the King Resources empire came too late and I do not believe any law firm could have done more than we did to avert the tragedies that followed in the criminal and bankruptcy courts.

A number of other cases may be significant, but the description of litigated cases in answer 18 should illustrate the breadth of my experience in the trial courts.

E. Commission on Accreditation for Law Enforcement Agencies

I served on the Commission on Accreditation for Law Enforcement Agencies that published a book entitled, Standards for Law Enforcement Agencies (The Standards Manual of the Law Enforcement Agency Accreditation Program), that is used in a number of states. The Standards recognized that small departments cannot use the same procedures that are used in large departments. The Standards provide a means of improving police practices while protecting the constitutional rights of citizens on the streets.

F. Judges Bench Book on Search and Seizure

I co-authored two books on search and seizure that are used in every state trial court in Colorado.

G. Uniform Criminal Jury Instructions

I served as Project Director for the Supreme Court of Colorado Committee on Criminal Jury Instructions. We are currently revising the Colorado Criminal Jury Instructions that were published in 1983.

March 25, 1988 William Hurt Erickson

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. **List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients, or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.**

   None.

2. **Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.**

   My primary effort would be to avoid conflicts of interests. If a potential conflict arose which would create an appearance of impropriety if I were to sit on a particular case, I would disqualify myself from that case and would endeavor to avoid or prevent any conflict from occurring in the future. If my ownership of stock was an issue, the stock would be sold to avoid a future conflict. I cannot anticipate any major conflicts of interest that would interfere with my service as a United States District Court Judge.

3. **Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.**

   No, but I do plan to assist in keeping the pocket parts up-to-date in the book I co-authored with William Neighbors and B. J. George. Jr. entitled: United States Supreme Court Cases and Comments.

4. **List sources and amounts of all income received during the calendar preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding $500 or more (If you prefer to do so, copies of the financial report, required by the Ethics in Government, may be substituted here.)**

March 25, 1988 William Hurt Erickson

5. Please complete the attached financial net worth statement in detail (Add schedules as called for.)

   Attached.

6. Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibility.

   No.

FINANCIAL DISCLOSURE REPORT

certain Judicial Employees (28 USCA App I, §§ 301-39)

Person Reporting (Last name, first, middle initial) Erickson, William H.	Court or Organization	Date of Report
Title Judicial Nominee for United States District Court for the District of Colorado	Date of Entry/Nomination/Termination (only if initial or final report) March 23, 1988	Reporting Period (Calendar year, or inclusive dates) Jan. 1, 1 to Feb. 29,
Home or office address (O) Colorado Supreme Court Two East 14th Avenue, Room 465 Denver, CO 80203		

IMPORTANT NOTES: *Please read the instructions accompanying this form. The report should include information pertaining to your spouse and dependent children, if any. Attach additional sheets if neede identifying each attachment by showing your name, the date of the report, and the section(s) being complete* **Complete all sections, checking the NONE box for each section where you have no reportable informatio** *Compare and reconcile this report with last year's and list items in the same order as last year. Type o print clearly. Sign on last page.*

I. POSITIONS. *(Reporting individual only; see pp. 15-16 of Instructions.)*

☐ **NONE** (No reportable positions)

POSITION	NAME OF ORGANIZATION/ENTITY
Justice	Supreme Court of the State of Colorado
Sole Proprietor	Leases of commercial realty, Denver, Colorado
Sole Proprietor	Oil and Gas Leases, Colorado, New Mexico & Wyomin
Sole Proprietor	Farming Business, Bailey County, Texas
President	The Debtor Corp. (inactive family corp.)
Custodian for son, William T. Erickson	Janus Venture Fund, Inc.; 100 Fund, Inc. & 101 Fund, Inc.
(SEE ATTACHED FOR ADD'L POSITIONS)	

II. AGREEMENTS. *(Reporting individual only; see p. 17 of Instructions.)*

☐ **NONE** (No reportable agreements)

DATE	PARTIES AND TERMS
Feb. 1971	State of Colorado; Providing for retirement benefits from the Colorado Public Employees' Retirement Association

III. NON-INVESTMENT INCOME. *(Partial disclosure for spouse; see pp. 18-20 of Instructions.)*

☐ **NONE** (No reportable non-investment income)

	DATE (Honoraria only)	SOURCE AND TYPE	GROSS INCOME (yours, not spouse's)
1		State of Colorado, salary	$ 74,250
2			$
3			$
4			$
5			$

FINANCIAL DISCLOSURE REPORT (cont'd)

Name of Person Reporting	Date of Report
William H. Erickson	3/24/88

IV. REIMBURSEMENTS and GIFTS--transportation, lodging, food, entertainment.

(Includes those to spouse and dependent children; see pp. 20-22 of Instructions.)

☒ NONE (No such reportable reimbursements or gifts)

	SOURCE	DESCRIPTION
1		
2		
3		
4		
5		
6		
7		
8		

V. OTHER GIFTS.

(Includes those to spouse and dependent children; see pp. 20-22 of Instructions.)

☒ NONE (No such reportable gifts)

	SOURCE	DESCRIPTION	VALUE
1			$
2			$
3			$
4			$

VI. LIABILITIES.

(Includes those of spouse and dependent children; see pp. 22-24 of Instructions.)

☐ NONE (No reportable liabilities)

	CREDITOR	DESCRIPTION	VALUE CODE
1	Capital Federal Savings	Deed of Trust (J)	M
2	Internal Revenue Service	Contingent Tax Liability 1/	O
3			
4			
5			
6			
7			

1/ My investment in Regent Leasing Associates i currently being examined by the Internal Revenue Serve for 1981 and 1982. This amount represents the latest proposed adjustment by the Internal Revenue Service for both tax years on a total investment of $76,000. The matter is being litig in the tax court.

* VALUE CODES J = $0 to $1,000 K = $1,001 to $5,000 L = $5,001 to $15,000 M = $15,001 to $50,
N = $50,001 to $100,000 O = $100,001 to $250,000 P = over $250,000

FINANCIAL DISCLOSURE REPORT (cont'd)
VII, page A

Name of Person Reporting: William H. Erickson

Date of Report: 3/24/88

VII. INVESTMENTS and TRUSTS--income, value, transactions.

(Includes those of spouse: partial disclosure for dependent children; see pp. 24-35 of Instructions.)

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure.	B. Income during period Amt. Code[1] (A-H)	B. Income during period Type (e.g., div.)	C. Gross value at end of period Value Code[2] (J-P)	C. Gross value at end of period Value Method Code[3] (Q-W)	D. Transactions during period (Reporting individual and spouse) Type (e.g., sold)	If not exempt from disclosure Date: Month-Day	If not exempt from disclosure Value Code[2] (J-P)	If not exempt from disclosure Gain Code[1] (A-H)	If not exempt from disclosure Identity of buyer/seller (if private transaction)
☐ NONE (No reportable income, assets, or transactions)									
1 First Bank of Muleshoe, Ck. Acct. 25-296-4, Muleshoe, TX	C	interest	N	T					
2 First Bank of Muleshoe, Money Mart Acct. 25-295-6 Muleshoe, TX	B	interest	L	T					
3 Colo. Nat'l Bank, Ck. Acct. 0585-29-7, Denver, CO	C	interest	M	T					
4 Colo. Nat'l Bank, Growth Acct. 5433-95-5, Denver, CO	B	interest	L	T					
5 United Bank of Denver, Money Mart Acct. 422-553, Denver, CO	B	interest	K	T					
6 Colo. Nat'l Bank, Ck. Acct. 0610-08-9, Denver, CO (S)	B	interest	L	T					
7 Colo. Nat'l Bank, Growth Acct. 5434-51-3, Denver, CO (S)	B	interest	L	T					
8 Colo. State Bank, Trust Acct 84-6072564, Denver, CO (S)	D	interest	N	T					
9 First Interstate Bank of Denver Cert. of Deposit #904531-3 Denver, CO (DC)	B	interest	K	T					
10 Merrill Lynch Cash Mgmt. Acct 431-81066, Denver, CO (SEE ATTACHED)	F	interest dividend	M	T					
11 Merrill Lynch Ready Asset Acct. 431-111-70, Denver, CO (S)	D	interest	N	T					
12 100 Fund, Inc. stock (DC)	F	dividend	N	T					
13 101 Fund, Inc. stock (DC)	E	dividend	N	T					
14 Janus Venture Fund stock (DC)	B	dividend	L	T					
15 Clay Street property (J) (SEE ATTACHED)	E	rent	O	Q					
16 Delaware Street property (SEE ATTACHED)	F	rent	P	Q					
17 Texas Farm property (SEE ATTACHED)	H	farm income	P	Q					
18 Affiliated Bankshares of Colorado, common stock	A		L	T					
19 Colorado National Bankshares common stock	A		N	T					
20 CSX Corporation, common stock	F	dividend	M	T					

1 Income/Gain Codes:	A = exempt ($0 to $100) E = $5,001 to $15,000	B = $101 to $1,000 F = $15,001 to $50,000	C = $1,001 to $2,500 G = $50,001 to $100,000	D = $2,501 to $5,000 H = over $100,000
2 Value Codes:	J = exempt ($0 to $1,000) N = $50,001 to $100,000	K = $1,001 to $5,000 O = $100,001 to $250,000	L = $5,001 to $15,000 P = over $250,000	M = $15,001 to $50,000
3 Value Method Codes:	Q = Appraisal U = Book value	R = Cost (real estate only) V = Other	S = Assessed value W = Estimated	T = Cash market

FINANCIAL DISCLOSURE REPORT (cont'd) VII, page 8	Name of Person Reporting William H. Erickson
Date of Report	3/24/88

VII. INVESTMENTS and TRUSTS--income, value, transactions.

(Includes those of spouse: partial
for dependent children: see pp. 24-35 of Instructions.)

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during period: Amt. Code[1] (A-H)	B. Type (e.g. div.)	C. Gross value at end of period: Value Code[2] (J-P)	C. Value Method Code[3] (Q-W)	D. Transactions during period (Reporting individual and spouse): Type (e.g. sold)	If not exempt from disclosure: Date: Month-Day	Value Code[2] (J-P)	Gain Code[1] (A-H)	Identity of buyer/seller (if private transaction)
☐ **NONE** (No reportable income, assets, or transactions)									
1 Mead Corporation, common stock	C	dividend	N	T					
2 Norfolk Southern Railway common stock	E	dividend	O	T					
3 Public Service Co. of Colorado, common stock	B	dividend	L	T					
4 United Banks of Colorado common stock	B	dividend	M	T					
5 Cambiar Investors, Inc., stock portfolio managed by United Bank (SEE ATTACHED)	H	dividend interest	P	T					
6 General Motors Corp., common stock (S)	B	dividend	L	T					
7 Colorado National Bankshares common stock (DC)	B	interest	K	T					
8 Municipal Bond issued for Adams & Arapahoe Counties	B	interest	L	T					
9 Municipal Bond issued for Adams/Weld Cntys. Sch. Dist. 27J	C	interest	L	T					
10 Municipal Bond issued for Colo. Multi-Cty SFM Rev.	B	interest	K	T					
11 Municipal Bond issued for Arvada, Colo. Urban Renewal Authority	A		K	T					
12 Municipal Bond issued for Avon Metro. Dist., Colorado	C	interest	L	T					
13 Municipal Bond issued for Colo. Health Fac. Authority (7.8% & 8.875%)	A	interest	L	T					
14 Municipal Bond issued for Colo. FHA Multi-Family Rev. Bonds	C	interest	M	T					
15 Municipal Bond issued for Colo. HFA Single Family Mtg. Rev.	D	interest	M	T					
16 Municipal Bond issued for Colo. Post Sec. Ed. Fac. Auty.	A		M	T					
17 Municipal Bond issued for Denver, Colo. Rev. Rfdg.	D	interest	M	T					
18 Municipal Bond issued for City & Cty of Denver, CO Cherry Creek	A		K	T					
19 Municipal Bond issued for Highlands Ranch Metro. Dist. No. 2	B	interest	L	T					
20 Municipal Bond issued for Jefferson Cty Colo. Res. Mtg. Rev. Bonds	C	interest	L	T					

1 Income, Gain Codes:	A = exempt ($0 to $100)	B = $101 to $1,000	C = $1,001 to $2,500	D = $2,5
	E = $5,001 to $15,000	F = $15,001 to $50,000	G = $50,001 to $100,000	H = over $
2 Value Codes:	J = exempt ($0 to $1,000)	K = $1,001 to $5,000	L = $5,001 to $15,000	M = $15,
	N = $50,001 to $100,000	O = $100,001 to $250,000	P = over $250,000	
3 Value Method Codes:	Q = Appraisal	R = Cost (real estate only)	S = Assessed value	T = Cash market
	U = Book value	V = Other	W = Estimated	

FINANCIAL DISCLOSURE REPORT (cont'd)
VII. page C

Name of Person Reporting
William H. Erickson

[illegible]
3/24/88

VII. INVESTMENTS and TRUSTS--income, value, transactions. *(Includes those of spouse; partial [illegible] for dependent children; see pp. 24-35 of Instructions.)*

A Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure.	B Income during period		C Gross value at end of period		D Transactions during period (Reporting individual and spouse)				
	Amt. Code[1] (A-H)	Type (e.g. div.)	Value Code[2] (J-P)	Value Method Code[3] (Q-W)	Type (e.g. sold)	If not exempt from [illegible] Date Month-Day	Value Code[2] (J-P)	Gain Code[1] (A-H)	[illegible]
☐ **NONE** (No reportable income, assets, or transactions)									
1 Municipal Bond issued for Larimer, Weld & Boulder Ctys. Colo. S.D.[illegible]	C	interest	L	T					
2 Municipal Bond issued for Muni.Subdist. Northern, CO [illegible]	B	interest	K	T					
3 Municipal Bond issued for Northglenn CO CD.Water ETM	B	interest	K	T					
4 Municipal Bond issued for Platte River Power Auth.	C	interest	L	T					
5 Municipal Bond issued for Pueblo Cty. CO GO Rfdg. MBIA	C	interest	M	T					
6 Municipal Bond issued for Southgate Water Dist. Colo. REF CO (Series A)	B	interest	L	T					
7 Regent Leasing Associates Limited Partnership Interest	A		N	U					
8 CIGNA Hotel Associates-I Limited Partnership Interest	A		O	U					
9 Colorado Public Employees' Retirement Assoc.	A		N	V					
10 Keogh Defined Benefit Plan	A		M	V					
11 IRA Acct. No. 431-81533 Mgd. by Merrill Lynch	A		K	V					
12 Book Royalty received from Matthew Bender	E	royalty	L	W					
13 Mineral Leases (SEE ATTACHED)	B	royalty	J						
14 Denver, Colo. G.O. Muni. Bond (sold)	B	interest	J						
15 MFG Equipment Ltd. 1980 Limited Partnership Interest	A		J						
16 Manufacturer Life Ins. (cash surrender value) (DC)	A		M	V					
17 National Service Life Insurance	A		M	V					
18 Colo. State Bank Checking(S) Acct. 0001603807, Denver,CO	A		K	T					
19 Connecticut General Ins. premium deposit fund for CIGNA [illegible]	B	interest	K	T					
20 Provident Mutual Life, No. 2184109 (Pol. surrendered)	B	dividend	J						

1 Income, Gain Codes:	A = exempt ($0 to $100) E = $5,001 to $15,000	B = $101 to $1,000 F = $15,001 to $50,000	C = $1,001 to $2,500 G = $50,001 to $100,000	D = [illegible] H = [illegible]
2 Value Codes:	J = exempt ($0 to $1,000) N = $50,001 to $100,000	K = $1,001 to $5,000 O = $100,001 to $250,000	L = $5,001 to $15,000 P = over $250,000	M = [illegible]
3 Value Method Codes:	Q = Appraisal U = Book value	R = Cost (real estate only) V = Other	S = Assessed value W = Estimated	T = Cash market

FINANCIAL DISCLOSURE REPORT (cont'd)
VII, page D

Name of Person Reporting: William H. Erickson
Date of Report: 3/24/88

VII. INVESTMENTS and TRUSTS--income, value, transactions. *(Includes those of spouse; partial disclosure for dependent children; see pp. 24-35 of Instructions.)*

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during period		C. Gross value at end of period		D. Transactions during period (Reporting individual and spouse)				
	Amt. Code[1] (A-H)	Type (e.g. div.)	Value Code[2] (J-P)	Value Method Code[3] (Q-W)	Type (e.g. sold)	If not exempt from disclosure: Date: Month-Day	Value Code[2] (J-P)	Gain Code[1] (A-H)	Identity of buyer/seller (if private transaction)
☐ NONE (No reportable income, assets, or transactions)									
1 Security Benefit Life, Pol. #01-405-7677 (pol.surrendered)	B	dividend	J						
2 Prudential Insurance, Pol. #32-211-411 (pol.surrendered)	B	dividend	J						
3 New York Life Ins., Pol. #12-180-071 (pol. surrendered)	B	dividend	J						
4 New York Life Ins., Pol. #11-180-070 (pol.surrendered)	B	dividend	J						
5									
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1 Income, Gain Codes	A = exempt ($0 to $100) E = $5,001 to $15,000	B = $101 to $1,000 F = $15,001 to $50,000	C = $1,001 to $2,500 G = $50,001 to $100,000	D = $2,5 H = over $1
2 Value Codes:	J = exempt ($0 to $1,000) N = $50,001 to $100,000	K = $1,001 to $5,000 O = $100,001 to $250,000	L = $5,001 to $15,000 P = over $250,000	M = $15
3 Value Method Codes	Q = Appraisal U = Book value	R = Cost (real estate only) V = Other	S = Assessed value W = Estimated	T = Cash market

FINANCIAL DISCLOSURE REPORT (cont'd)	Name of Person Reporting William H. Erickson	Date of Report 3/24/88

VIII. ADDITIONAL INFORMATION or EXPLANATIONS. *(Indicate section of Report.)*

☐ **Check to affirm that differences in investments from those reported in prior year are exempt from disclosure.**

IX. CERTIFICATION.

In compliance with the provisions of 28 U.S.C. § 455 and of Advisory Opinion No. 57 of the Advisory Committee on Judicial Activities, and to the best of my knowledge at the time after reasonable inquiry, I did not perform any adjudicatory function in any litigation during the period covered by this report in which I, my spouse, or my children had a financial interest, as defined in Canon 3C(3)(c), in the outcome of such litigation.

I certify that all information given above (including information pertaining to my spouse and dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

Signature William H. Erickson
William H. Erickson

Date March 24, 1988

NOTE: ANY INDIVIDUAL WHO KNOWINGLY AND WILFULLY FALSIFIES OR FAILS TO FILE THIS REPORT MAY BE SUBJECT TO CIVIL AND CRIMINAL SANCTIONS (28 U.S.C.A. APP. I, § 304, AND 18 U.S.C. § 1001.)

FILING INSTRUCTIONS:

1. *Mail signed original and 4 additional copies to:*

   Judicial Ethics Committee
   Administrative Office of the
   United States Courts
   Washington, DC 20544

2. *Deliver one copy to the Clerk of the Court on which you sit or serve. (Judicial employees not associated with a specific court, such as employees of the Administrative Office and the Federal Judicial Center, need not file a copy with any court.)*

FINANCIAL DISCLOSURE REPORT

William H. Erickson March 24, 1988

I. POSITIONS (continued)

- Member of the Council of the American Law Institute (1972-);
- Chairman of the Fellows of the American Bar Foundation (1985-86) (State Chairman 1980-83), Vice-Chairman (1984-85), Secretary (1983-84);
- Fellow of the American College of Trial Lawyers; member Federal Rules Committee (1984-);
- Fellow of the International Academy of Trial Lawyers; member of Judicial Committee (1983-);
- Fellow of the International Society of Barristers
- Fellow, Colorado Bar Foundation;
- National Council of Trustees Freedoms Foundation at Valley Forge;
- Director, Pretrial Services Resources Center (1979-);
- Chairman and Judicial Liaison, Colorado Criminal Jury Instructions drafting committee (1972-83); (1987-);
- Board of Directors, American Board of Trial Advocacy (1984-);
- Colorado State Delegate to the House of Delegates of the American Bar Association (1979-);
- Chairman of the American Bar Association Committee to Implement the Standards for Criminal Justice for the Tenth Circuit (1969-);
- Co-chairman of the Colorado Task Force on Courts -- Colorado Commission on Criminal Justice Standards and Goals;
- Supervising Justice for the Colorado Supreme Court Grievance Committee and Unauthorized Practice of Law Committee (1975-);
- Supervising Justice on the Committee to Study and Revise the Code of Professional Responsibility (1987-);
- ABA Standing Committee on Ethics and Professional Responsibility (Judges Advisory Committee (1987-));
- ABA Senior Lawyers Division, chairperson -- Committee on Professionalism (1987-88), Authors Roundtable.

CONFIDENTIAL FINANCIAL STATEMENT

NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS	
Cash on hand and in banks 1/	320,400.00
U.S. Government securities—add schedule 2/	
Listed securities—add schedule 3/	2,096,500.00
Unlisted securities—add schedule	214,200.00
Accounts and notes receivable:	
Due from relatives and friends	-0-
Due from others	-0-
Doubtful	-0-
Real estate owned—add schedule	1,985,100.00
Real estate mortgages receivable	-0-
Autos and other personal property	84,500.00
Cash value—life insurance	37,600,00
Other assets—itemize:	
Retirement plans	106,200.00
Prepaid Insurance Premiums	7,500.00
Total assets	4,852,000.00

LIABILITIES	
Notes payable to banks—secured	-0-
Notes payable to banks—unsecured	-0-
Notes payable to relatives	-0-
Notes payable to others	-0-
Accounts and bills due	-0-
Unpaid income tax	-0-
Other unpaid tax and interest	-0-
Real estate mortgages payable—add schedule	25,000.00
Chattel mortgages and other liens payable	-0-
Other debts—itemize:	-0-
Total liabilities	25,000.00
Net worth	4,827,000.00
Total liabilities and net worth	4,852,000.00

CONTINGENT LIABILITIES	
As endorser, comaker or guarantor	-0-
On leases or contracts	-0-
Legal Claims 4/	163,400.00
Provision for Federal Income Tax	-0-
Other special debt	-0-

GENERAL INFORMATION	
Are any assets pledged? (Add schedule.)	
Are you defendant in any suits or legal actions?	
Have you ever taken bankruptcy?	

1/ Includes certificate of deposit worth $2,100 and two checking acounts with an aggregate balance of $1,000 both owned by William T. Erickson, a dependent son.

2/ No U.S. securities are directly owned; Doris R. Erickson holds an indirect interest in Colorado State Bank Trust Account No. 84-6072564, and I own some GNMA's through my Merrill Lynch Cash Management Account.

3/ Includes $169,600 in securites owned by William T. Erickson, a dependent son.

4/ My investment in Regent Leasing Associates is currently being examined by the Internal Revenue Service for 1981 and 1982. This amount represents the latest proposed adjustment by the Internal Revenue Service for both tax years in a total investment of 6,000. The matter is being litigated in the tax court.

III. GENERAL (PUBLIC)

1. **An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.**

   I have been a member of the Supreme Court of Colorado since 1971, and my activities in satisfying Canon 2 have been reflected primarily in lectures and participation in programs on continuing legal and judicial education. Prior to 1971, I accepted appointment to defend the indigent in criminal cases and provided pro bono services in a substantial number of civil cases. I have participated in various efforts for judicial reform, modernization, and simplification of judicial procedures, and in programs to reduce court costs and delay. My participation is set forth in greater detail in earlier sections of this questionnaire. I also served as Chairman of the United Way Campaign for the Denver Bar Association.

2. **The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates -- through either formal membership requirements or the practical implementation of membership policies?**

   To my knowledge, no organization I belong to has such membership policies.

   If so, list, with dates of membership. What you have done to try to change these policies?

3. **Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts?**

   Yes.

   If so, did it recommend your nomination?

   I don't know.

Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and interviews in which you participated).

On October 3, 1985, I was interviewed for a vacancy on the Tenth Circuit Court of Appeals at the Department of Justice, but was not selected. The people who interviewed me were: Grover Rees, Special Assistant to the Attorney General; Jane Swift, Special Counsel for Judicial Selection; Stephen S. Trott, Assistant Attorney General; William Bradford Reynolds, Assistant Attorney General; Richard Willard, Acting Assistant Attorney General; Carolyn B. Kuhl, Deputy Assistant Attorney General; and Sol Wisenberg, a consultant with the Office of Legal Policy.

In the fall of 1987, I was interviewed by Senator Armstrong's blue ribbon committee -- again, for appointment to the Tenth Circuit. Those who interviewed me included: Theodore S. Halaby; Terry Considine; Miles Cortez; Raymond L. Friedlob; and Ruth G. Lehman.

I filled out a questionnaire for the nominating commission that was similar to the one used in our state court nominating process.

I later learned that the Tenth Circuit position was filled, but that I was being considered for the district court position. On November 3, 1987, I was interviewed at the Justice Department by: Stephen S. Trott, Associate Attorney General; Thomas Barba, Deputy Assistant Attorney General; Seth Liebman, Attorney Advisor, and Steven J. Markman, Assistant Attorney General.

Since November 1987 I have had informal conversations with Senator William Armstrong; Stephen J. Markman; Seth Liebman; Shiela Joy, Staff Assistant to Office of Legal Policy; and Laura Nelson of the Legislative Affairs Office.

4. **Has anyone involved in the process of selecting you as a judicial nominee discussed with you a specific case, legal issue or question in a manner that could reasonably be interpreted as seeking any express or implied assurances concerning your position on such case, issue, or question? If so, please explain fully.**

No.

5. Please discuss your views on the following criticism involving "judicial activism."

Some to the characteristics of this "judicial activism" have been said to include

a. A tendency by the judiciary toward problem-solution rather than grievance-resolution;

b. A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;

c. A tendency by the judiciary to impose broad, affirmative duties upon governments and society;

d. A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and

e. A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.

At a very early period in my judicial service, I became concerned with judicial activism. In my view, an opinion of the Colorado Supreme Court should be written as narrowly as possible and should address only the issues that are actually controverted and should not offer legal advice as to the way other issues should be handled. In teaching at the New York University Appellate Judges Seminar, I strongly advocated writing no more than was absolutely necessary to resolve the issues in a particular case. A recent trend, which I particularly object to, is the use of state constitutions to circumvent and avoid constitutional rulings of the Supreme Court of the United States. People v. Sporleder, 666 P.2d 135 (Colo. 1983).

I have also been a critic of relaxing requirements for standing and ripeness. See Wimberly v. Ettenberg, 194 Colo. 163, 570 P.2d 535 (1977). I do not believe that courts should act as super judges or super administrators to provide continuous review of administrative agencies and should not provide any oversight function.

AMERICAN BAR ASSOCIATION
Standing Committee on Federal Judiciary
1800 M Street, NW
Washington, DC 20036
(202) 331-2210

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Lincoln, NE 68501

NINTH CIRCUIT
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Seattle, WA 98101

Samuel L. Williams
45th Floor
355 South Grand Avenue
Los Angeles, CA 90071

TENTH CIRCUIT
James A. Clark
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303 East 17th Avenue
Denver, CO 80203

ELEVENTH CIRCUIT
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Montgomery, AL 36101

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James J. Bierbower
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FEDERAL CIRCUIT
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Washington, DC 20006

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STAFF LIAISON
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1800 M Street, NW
Washington, DC 20036
(202) 331-2210
ABA/NET: ABA 461

March 23, 1988

CONFIDENTIAL

The Honorable Joseph R. Biden, Jr.
Chairman, United States Senate
Committee on the Judiciary
Washington, D.C. 20510

Re: WILLIAM H. ERICKSON
United States District Court
for the District of Colorado

Dear Senator Biden:

Thank you for affording this Committee an opportunity to express an opinion pertaining to the nomination of William H. Erickson for appointment as Judge of the United States District Court for the District of Colorado.

A substantial majority of our Committee is of the opinion that Judge Erickson is "Well Qualified" for this appointment. A small minority found him to be Qualified and another small minority found him to be Exceptionally Well Qualified.

Sincerely yours,

Harold R. Tyler, Jr.
Chairman

cc: All Committee Members

SIMEON TIMOTHY LAKE III

Birth:	July 4, 1944	Chicago, Illinois
Legal Residence:	Texas	
Marital Status:	Married	Carol Illig Lake 2 children
Education:	1962 - 1966	Texas A&M University B.A. degree
	1966 - 1969	University of Texas School of Law J.D. degree
Bar:	1969	Texas
Military Service:	1970 - 1971	United States Army
Experience:	1969 - 1970	Fulbright & Jaworski Associate
	1970	Christie, Berry & Dunbar Attorney (part-time)
	1972 - present	Fulbright & Jaworski Associate 1972 - 1977 Partner 1977 - present
Office:	1301 McKinney street Houston, Texas 77010 713 651-5151	
Home:	7516 Briar Rose Houston, Texas 77063 713 781-5240	

To be United States District Judge for the Southern District of Texas

Senate Questionnaire For Judicial Nominees

I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. Full name (include any former names used).

ANSWER: Simeon Timothy Lake III

2. Address: List current place of residence and office addresses(es).

ANSWER: Residence:
6118 Riverview Way
Houston, Texas 77057
(713) 973-8732

Office:
Fulbright & Jaworski
1301 McKinney Street
Houston, Texas 77010
(713) 651-5151

3. Date and place of birth.

ANSWER: July 4, 1944 -- Chicago, Illinois

4. Marital Status (include maiden name of wife or husband's name). List spouse's occupation, employer's name and business address(es).

ANSWER: I married Carol (Illig) Lake on December 30, 1970. She does not work outside the home.

5. Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.

ANSWER: Texas A&M University from 1962 to 1966 -- Bachelor of Arts Degree with honors/May 1966

University of Texas School of Law from 1966 to 1969 -- Doctor of Jurisprudence Degree with high honors/January 1969

6. Employment Record: List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including firms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.

ANSWER: During the summer of 1966 I worked for J. R. Dowdell & Co. in Fort Worth.

After graduating from law school, I worked for Fulbright & Jaworski in Houston as an associate attorney from March 1969 until February 1970 when I went on active duty with the United States Army.

During the summer and fall of 1970 I was assigned to the United States Armed Forces Language Institute in El Paso. While there I worked part-time in the law offices of Joe Christie.

After being discharged from the Army I returned to Fulbright & Jaworski in February of 1972, and I have practiced with that Firm since then. I became a partner of the Firm in June of 1977.

7. Military Service: Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.

ANSWER: I was commissioned a 2d Lt. in the United States Army in May of 1966 upon graduation from college. I served on active duty with the United States Army from February 11, 1970 through October 28, 1971. I served from March 25 through October 25, 1971, as a prosecuting attorney for the 23rd Infantry Division and later for the 196th Infantry Brigade. I was honorably discharged with the rank of Captain. My service number was 449623942.

8. Honors and Awards: List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.

ANSWER: Graduated with Honors from Texas A&M University
Distinguished Student every semester
Distinguished Military Graduate
Who's Who Among University and College Students in the U.S.
Recipient of the George S. Patton Scholarship
Recipient of the Liberal Arts Achievement Award
Recipient of the American Legion Award

Graduated with High Honors from University of Texas Law School
Member of the Editorial Board of the Texas Law Review
Chief Justice of the University of Texas Student Court
Counsels (service honor society)
Order of the Coif
Chancellors (scholastic honor society)
Permanent President of the Law School Class of 1969

While in the Army I received the Bronze Star Medal and the Army Commendation Medal.

In 1987 I received the Houston Bar Association President's Award for outstanding service as Editor of The Houston Lawyer.

9. Bar Associations: List all bar associations, legal or judicial-related committees or conferences of which you are or have been a member and give the titles and dates of any offices which you have held in such groups.

ANSWER: State Bar of Texas, American Bar Association, Fellow Texas Bar Foundation, Charter Fellow Houston Bar Foundation, former member of section council and officer of Environmental Law Section State Bar of Texas, former Editor of The Houston Lawyer and presently member of the Editorial Board of that publication

10. Other Memberships: List all organizations to which you belong that are active in lobbying before public bodies. Please list all other organizations to which you belong.

ANSWER: I am not a member of any organizations that are active in lobbying before public bodies.

I am a member of St. Martin's Episcopal Church, Downtown Houston YMCA, the Houston Country Club, and Charnwood Civic Club (former President).

11. Court Admission: List all courts in which you have been admitted to practice, with dates of admission and lapses if any such memberships lapsed. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.

ANSWER:
State Bar of Texas -- May 26, 1969
United States Court of Appeals for the Fifth Circuit -- July 1969
United States District Court for the Southern District of Texas -- October 1969
United States Supreme Court -- February 1976
Temporary Emergency Court of Appeals -- May 1979
United States Court of Appeals for the Third Circuit -- October 1981
United States District Court for the Northern District of Texas -- April 1983

12. Published Writings: List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to

the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.

ANSWER: Case Note -- 46 TEXAS L. REV. 979 (1968). A copy is attached.

Article -- "Cases Substantially Broaden TECA Jurisdiction," September 10, 1979 Legal Times of Washington. A copy is attached.

As Editor of The Houston Lawyer from June of 1986 to May of 1987, I wrote a column in five bi-monthly issues. Copies are attached.

13. Health: What is the present state of your health? List the date of your last physical examination.

ANSWER: Excellent. February 25, 1988 -- Dr. William R. Owen, Hermann Professional Building, 6410 Fannin, Suite 643, Houston, Texas 77030 (713/790-1230)

14. Judicial Office: State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

ANSWER: None.

15. Citations: If you are or have been a judge, provide: (1) citations for the ten most significant opinions you have written; (2) a short summary of and citations for all appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings; and (3) citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, please provide copies of the opinions.

ANSWER: Not applicable.

16. Public Office: State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.

ANSWER: None

17. Legal Career:

a. Describe chronologically your law practice and experience after graduation from law school including:

1. whether you served as clerk to a judge, and if so, the name of the judge, the court, and the dates of the period you were a clerk;

2. whether you practiced alone, and if so, the addresses and dates;

3. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each.

ANSWER: After graduating from law school in January 1969, I spent a month and a half studying for and taking the Texas Bar Examination. I worked for Fulbright & Jaworski in Houston as an associate attorney from March 1969 until February 1970 when I went on active duty with the United States Army. My year at Fulbright & Jaworski was devoted primarily to legal research and writing of memoranda for other lawyers.

During the summer and fall of 1970 I was assigned to the United States Armed Forces Language Institute in El Paso. While there I worked part-time in the law offices of Joe Christie.

I served in Viet Nam from March 25 through October 25, 1971, as a prosecuting attorney for the 23rd Infantry Division and later for the 196th Infantry Brigade. All of my cases in Viet Nam were criminal.

I returned to work for Fulbright & Jaworski in February of 1972. The first year or two of my practice was devoted primarily to legal research and the writing of memoranda and appellate briefs. At the same time, I gradually began developing a trial docket of my own. For the next several years I defended personal injury cases and tried a variety of commercial and real estate cases, usually in state court. For the past 8 years my practice has been devoted primarily to energy and environmental litigation, usually in federal court. My principal clients have been The Coastal Corporation, Browning-Ferris Industries, Inc., Cities Service Company, Texas Energy Reserve Corporation, Petrade International, Inc., Texaco Inc., Uniroyal Goodrich Tire Company, and Transco Energy Company.

I was certified by the Texas Board of Legal Specialization in Civil Trial Law in December 1980.

b. 1. What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?

ANSWER: See answer to 17a.1-3 above.

2. Describe your typical former clients, and mention the areas, if any, in which you have specialized.

ANSWER: See answer to 17a.1-3 above.

c. 1. Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates.

ANSWER: The frequency of my court appearances changed as the nature of my practice changed. Early in my career when I had an active tort defense and commercial docket, I appeared in State District Court frequently. As the nature of my practice changed primarily to energy and environmental litigation, the frequency of my court appearances decreased while their length increased. In the last two years I have tried only three cases, but each lasted a minimum of three weeks.

2. What percentage of these appearances was in:
   (a) federal courts;
   (b) state courts of record;
   (c) other courts.

ANSWER: From 1972 through 1978 almost all of my court appearances were in state court. From 1979 to the present my practice has been approximately 50% in federal court, 40% in state court, and 10% before arbitration tribunals and other forms of alternative dispute resolution.

3. What percentage of your litigation was:

   (a) civil;
   (b) criminal.

ANSWER: Other than my criminal prosecutions in Viet Nam and two indigent criminal defense cases earlier in my career, all of my litigation experience has been civil.

4. State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

ANSWER: I have tried approximately 35 cases to a verdict or judgment as sole or lead counsel, not including court-martials in Viet Nam. This number does not include cases disposed of by motions for summary judgment or motions to dismiss.

5. What percentage of these trials was:
   (a) jury;
   (b) non-jury.

ANSWER: (a) 75%
(b) 25%

18. Litigation: Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

(a) the date of representation;

(b) the name of the court and the name of the judge or judges before whom the case was litigated; and

(c) the individual names, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

ANSWER: See attachment.

19. Legal Activities: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived).

ANSWER: Other than the cases discussed in my answer to question 18, my most significant legal activities have been in the area of training Fulbright & Jaworski's litigation attorneys. For the past four years I have planned and supervised the Firm's 10-week Trial Advocacy Program for new litigation attorneys. For the four years immediately prior to that I planned and supervised the Firm's 20-week Litigation Training Seminar program.

I have been a member of the Editorial Board of The Houston Lawyer for the last four years and was editor in 1986 and 1987. As editor I received the President's Award for Outstanding Service to the Houston Bar Association.

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients, or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.

ANSWER: I have agreed to a lump-sum settlement with Fulbright & Jaworski. After my appointment becomes effective, I will receive a lump-sum payment from the Firm and thereafter I will have no right to receive any future financial benefits from the Firm or any pension or other employee benefit plan of the Firm.

2. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.

ANSWER: I will strictly adhere to the requirements of 28 U.S.C. § 455 and to Canon 3.C. of the ABA Code of Judicial Conduct. The only potential conflict of interest which I can foresee would be an instance in which Fulbright & Jaworski appeared before me in a case in which the Firm's representation in the matter had commenced while I was still a member of the Firm.

If something unforeseen should arise which could give even the appearance of a potential conflict of interest, I will consult with other judges of the court and will recuse myself if it should appear appropriate to do so.

3. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

ANSWER: No.

4. List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding $500 or more. (If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.)

ANSWER: A copy of my Financial Disclosure Report, Standard Form 278, dated March 31, 1988, accompanies this Questionnaire.

5. Please complete the attached financial net worth statement in detail. (Add schedules as called for.)

ANSWER: My financial net worth statement is attached.

6. Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

ANSWER: In 1969 I canvassed minority neighborhoods and spoke to minority groups as part of a voter registration drive conducted by the Democratic Party.

In 1978, during James A. Baker, III's campaign for attorney general of Texas, I put up signs, worked as a team captain on the telephone committee, and was a member of the speakers committee.

III. GENERAL (PUBLIC)

1. An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

ANSWER: During my first year of practice with Fulbright & Jaworski I worked with other lawyers in the Firm in the defense of two indigent criminal defendants. In one case I assisted in writing a brief to the United States Court of Appeals for the Fifth Circuit; in the other case I investigated the facts surrounding the alleged crime.

As editor of Vol. 24 of The Houston Lawyer in 1986 and 1987, I selected Editorial Board members from a cross-section of the Houston legal profession, including minority members. As editor, and previously as a member of the Editorial Board, I sought to publish articles from a cross-section of the Houston legal profession. During my tenure as editor, The Houston Lawyer published a number of articles dealing with disadvantaged segments of the population, including articles on retrieving possession of children through habeas corpus, mediation in juvenile restitution, divorce mediation, dispute resolution centers, alimony, the Immigration Reform and Control Act of 1986, rights of physically handicapped persons, and constitutional protection afforded delinquent juveniles.

2. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or

religion. Do you currently belong, or have you belonged, to any organization which discriminates -- through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What you have done to try to change these policies?

ANSWER: No, I do not now and have never belonged to and would not belong to any organization that invidiously descriminates on the basis of race, sex or religion. I am currently a member of the Houston Country Club, which is conveniently located to our home. Although the Houston Country Club has members of various religions and both sexes, it does not have any black members. I have reviewed the constitution and by-laws of the club and neither discriminate on the basis of race. I have investigated the question of possible discrimination and have determined from speaking with knowledgeable officials of the club that the club does not discriminate on the basis of race and that to their knowledge there have never been any black applicants for membership. I favor and would strongly support membership of blacks and other minorities in the club.

3. Is there a selection commission in your jurisdiction to recommend candicates for nomination to the federal courts? If so, did it recommend your nomination? Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and interviews in which you participated).

ANSWER: Senator Phil Gramm of Texas appointed a Judicial Selection Committee before whom I appeared and to whom I submitted a Personal Data Questionnaire similar to this one. I appeared before that Committee on two occasions and was interviewed by Senator Gramm. Although the findings of the Committee are confidential, I assume that the Committee found me qualified since I was ultimately recommended by Senator Gramm for nomination by the President to the United States District Court for the Southern District of Texas.

4. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as seeking any express or implied assurances concerning your position on such case, issue, or question? If so, please explain fully.

ANSWER: No.

5. Please discuss your views on the following criticism involving "judicial activism."

The role of the Federal judiciary within the Federal government, and within society generally, has become the subject of increasing controversy in recent years. It has become the target of both popular and academic criticism that alleges that the judicial branch has usurped many of the prerogatives of other branches and levels of government.

Some of the characteristics of this "judicial activism" have been said to include

a. A tendency by the judiciary toward problem-solution rather than grievance-resolution;

b. A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;

c. A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and

e. A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.

ANSWER: Since members of the judicial branch are the least responsive to the electorate, I believe they should exercise restraint in invalidating laws or regulations of the legislative and executive branches and of state and local governments. I believe the primary role of a judge is to resolve the dispute in the case before him, and not to impose far-reaching pronouncements based upon what he believes desirable public policy to be. Although I believe that a judge should be vigorous in seeing that the rights of all litigants are vindicated, whenever possible I believe that a judge should select the remedy that is least likely to intrude upon the activities of other institutions.

First Case

David M. Cummings, Jr., et al. v. Texaco Chemical Company, et al., Civil Action No. B-85-747-CA, in the United States District Court for the Eastern District of Texas, Beaumont Division

Plaintiffs sought to recover damages to their property allegedly resulting from the illegal disposal of hazardous chemical waste on their property and on the adjacent Bailey Waste Disposal Site. The United States Environmental Protection Agency identified the Bailey Site as a candidate for cleanup under the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"). In addition, the plaintiffs alleged an action under § 107 of CERCLA to recover response costs and for declaratory and injunctive relief to require remediation of the Site. On March 17, 1987, the District Court granted Defendants' Motion For Summary Judgment with respect to plaintiffs' CERCLA claim. The plaintiffs' common law damage action was tried from August 31 through September 30, 1987, in Marshall, Texas. On September 24 the District Court granted Defendants' Motion For Directed Verdict with respect to the plaintiffs' causes of action for strict liability for inherently dangerous activity, fraud and deceit, and punitive damages. On September 30, the jury returned a unanimous verdict finding that:

(1) The plaintiffs knew or should have known that hazardous substances had been deposited on their property by June of 1982, thereby barring their claims under the Texas two-year statute of limitations;

(2) The defendants were not liable under the plaintiffs' remaining causes of action for negligence, negligence *per se*, trespass, nuisance or intentional pollution; and

(3) Finding that the plaintiffs suffered no damages.

On October 14, 1987, a Final Judgment was entered ordering that the plaintiffs take nothing from defendants.

The case is significant in several respects. By granting Defendants' For Summary Judgment with regard to plaintiffs' CERCLA claim, the court resolved the then unanswered question of whether a plaintiff who had incurred CERCLA response costs, which had been reimbursed, could still bring a private cost recovery action under § 107 of CERCLA. Initially, plaintiffs also sought to recover injunctive and declaratory relief. After the filing of Defendants' Memorandum of Law in Support of their Motion for Summary Judgment on Subject Matter Jurisdiction, and the indication by EPA that it agreed with defendants that the court lacked subject matter jurisdiction over plaintiffs' claims for declaratory and injunctive relief, plaintiffs withdrew their claims for declaratory and injunctive relief. The trial of the merits was significant from a legal standpoint because it was the first case tried under the new statute of limitations provision of CERCLA, § 203 of the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C.A. § 9658 (1987 Supp.). At the time of the trial the elements of this new limitations provision had not been established. From a practical standpoint the case is significant because defendants were successful in obtaining a unanimous jury verdict on all issues even though there was no dispute that many of the defendants had deposited a significant amount of waste on and adjacent to the plaintiffs' property.

I represented defendants Texaco Chemical Company, Texaco Refining and Marketing Inc., Texaco Butadiene Company, B. F. Goodrich Company, Neches Butane Products Company, Browning-Ferris, Inc., and Browning-Ferris Industries Chemical Services, Inc. and was lead counsel for all defendants. I tried approximately 75% of the defendants' case.

Judge
Hon. Sam B. Hall, Jr.
United States District Court
Eastern District of Texas
Marshall Division
100 E. Houston Street
Marshall, Texas 75670
(214) 935-3868

Counsel for Plaintiffs
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Local Counsel for Defendants, Texaco Chemical Company, Texaco Refining and Marketing Inc., Texaco Butadiene Company, B. F. Goodrich Company, Neches Butane Products Company, Browning-Ferris, Inc., and Browning-Ferris Industries Chemical Services, Inc.
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Counsel for Defendant, Dow Chemical Company
Mr. Martin D. Beirne
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Allied Bank Tower, 24th Floor
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Houston, Texas 77056
(713) 623-0887

Second Case

J. R. Adams and Cloyce K. Box v. Petrade International, Inc. and Gulf States Oil & Refining Co.; Cause No. 79-32696; In the 333rd Judicial District Court of Harris County, Texas, tried in January and February of 1986 -- presently on appeal to the Court of Appeals for the First Supreme Judicial District of Texas, Houston, Texas

This was an action by my client, Petrade International, Inc., and Gulf States Oil & Refining Co. for breach of agreements by J. R. Adams and Cloyce K. Box to buy substantial amounts of regular gasoline and No. 2 oil and for breach of an agreement to settle their obligations under the No. 2 oil purchase agreement. Some, but not all, of defendants' obligations were evidenced by a signed writing, and issues on promissory estoppel, oral guarantee and the merchant's exception under the Texas Uniform Commercial Code were submitted to the jury. The case also involved issues of partnership, agency and the correct measure of damages in this type of action. The charge to the jury was 89 pages, most of which was answered in favor of the plaintiffs. I tried the majority of the plaintiffs' case.

Both plaintiffs and defendants have appealed from the trial court's judgment, plaintiffs complaining that they were not awarded the full amount of prejudgment interest to which they were entitled and that all damages were not awarded jointly and severally against both defendants; and defendants complaining about the measure of damages awarded by the trial court and the legal and factual sufficiency to support the jury's findings. On March 17, 1988, the Court of Appeals issued an opinion affirming in part and reversing in part the judgment of the trial court. All parties are expected to seek a rehearing in the Court of Appeals.

The case involves a number of legal questions that have not been finally decided by Texas courts, including:

(1) Whether normal contract damages are recoverable in a case where promissory estoppel is used to overcome a statute of frauds defense;

(2) The liability of one general partner who is released in his individual capacity for a partnership settlement obligation;

(3) Whether prejudgment interest as computed under Cavnar v. Quality Control Parking, Inc., 696 S.W.2d 549 (Tex. 1985), is recoverable in an action for breach of contract;

(4) The jury findings that must be established to prove a cause of action for oral guarantee; and

(5) Whether market price/contract price damages as provided in section 2.708(a) of the Texas Uniform Commercial Code may be recovered by a middleman or trader, who, although contractually obligated to pay its supplier, does not take actual physical possession of the goods to be sold.

Judge
Hon. Davie Wilson
Judge of the 333rd District Court
Harris County Civil Courts Bldg.
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Third Case

Oriental Petroleum and Minerals Corporation, et al. v. Philippine-Cities Service, Inc., et al.; Before the International Chamber of Commerce Court of Arbitration

This arbitration proceeding was brought by several Philippine oil companies against Philippine-Cities Service, Inc. ("PCSI"), whom I represented, and Husky (Philippines) Oil, Inc. My partner, Bill Parse, and I represented PCSI. The Philippine companies alleged that PCSI wrongfully allocated revenue from the sale of production in the Northwest Palawan field to Husky under the terms of the operating agreement in question. Although Husky elected not to participate in the wells from which the production occurred, it had expended significant exploration costs in other blocks of the field. Also at issue was the question of how any money determined to have been wrongfully paid to Husky should be redistributed among PCSI and the Philippine companies. The case was tried for 4-1/2 weeks in the fall of 1983 before an arbitration panel and was argued for four days after briefs were submitted. While the case was under consideration by the arbitration panel it was settled. I tried the majority of PCSI's case.

The case involved a number of significant issues including (1) the relationship between a production sharing contract, in which the government participated, and an operating agreement, solely among the private parties, in determining the obligations of the private parties vis-a-vis one another; (2) whether, contrary to normal industry practice, a party who elects not to participate in a successful well is entitled to recover certain categories of production under the unique terms of the agreements in question because of payments of earlier exploration costs. The case was also complex because the arbitration clause provided that the substantive law of Alberta, Canada, would govern and that the case would be arbitrated in Geneva, Switzerland, under the ICC rules. Because the ICC rules are generally silent as to pre-trial and trial procedure, discovery, and evidence, there were a number of disputes as to which law the arbitration panel should look to to govern these matters.

Arbitrators

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Counsel for Philippine Overseas Drilling & Oil Development Corp.
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Fourth Case

Irvin and Pauline Scarbrough, et al. v. Browning-Ferris Industries Chemical Services, Inc., et al.; Cause No. 9005; In the District Court of Polk County, Texas

This was one of 14 lawsuits filed by residents of various East Texas subdivisions from 1979 through 1983 against Browning-Ferris Industries Chemical Services, Inc. seeking personal injury and property damages because of defendant's use of allegedly contaminated waste oil for surfacing rural roads in East Texas. The case is significant from a legal standpoint because of the class action issues that were presented. When the case was first filed the plaintiffs sought certification of a class action under Rule 42 of the Texas Rules of Civil Procedure. After extensive briefing and argument, the court denied the plaintiffs' motion. The court's ruling was significant because at the time a number of plaintiffs' counsel were attempting to bring class actions in various mass tort cases in which the individual damages differed from plaintiff to plaintiff and in which there were frequently different defenses, such as the statute of limitations, available against different plaintiffs.

After a number of cases similar to Scarbrough had been filed and numerous interventions filed in Scarbrough itself, defendants sought class certification under Tex. R. 42(b)(1) on the issue of punitive damages. Although the court denied defendants' motion, the motion nevertheless raised important issues concerning the organization for trial of mass tort and other cases involving numerous plaintiffs in the same or related lawsuits. Absent class certification (or consolidation, which was not available because all of the cases were not pending in the same Texas state court) a defendant is faced with two severe disadvantages in defending such cases. First, an adverse liability finding against the defendant will be used as a basis for asserting affirmative collateral estoppel in the related cases while a defendant cannot use a favorable liability finding to assert collateral estoppel as a defense in the related cases because the parties plaintiff are not in privity. Second, absent class certification or consolidation the defendant in such a case faces the risk of multiple judgments for punitive damages arising out of the same conduct.

Ultimately, all of these cases were settled without a trial on the merits. I was lead counsel for defendants in all of the cases.

Judge
Hon. Joe Ned Dean
Judge of the 258th District Court
Trinity County Courthouse
Off Highway 287
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Groveton, Texas 75845
(409) — 642-2512

Counsel for Plaintiffs
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Fenley & Bate
224 E. Lufkin Avenue
P. O. Box 450
Lufkin, Texas 75901
(409) 634-3346

Co-counsel for Various Plaintiffs
John N. Barnhart
Barnhart, Mallia, Cochran & Luther
806 Main Street, 16th Floor
Houston, Texas 77002
(713) 222-2626

Co-counsel for Various Plaintiffs
John M. Cely
Attorney at Law
110 East Lufkin Avenue
P. O. Drawer 388
Lufkin, Texas 75901
(713) 632-5577 or 632-5551

Co-counsel for Various Plaintiffs
W. Wilson McVicker, Jr.
McVicker & Evans
302 N. Third Street
P. O. Drawer 1747
Lufkin, Texas 75901
(713) 634-8806

Co-counsel for Various Plaintiffs
John Warner
Lufkin, Texas
(713) 639-2344

Co-counsel for Various Plaintiffs
Claude E. Welch
Attorney at Law
115 W. Shepherd Avenue
P. O. Box 1574
Lufkin, Texas 75901-1574
(409) 639-3311 or 632-3268

Local Counsel for Defendants
Ross Hightower
Attorney at Law
316 No. Washington Street
P. O. Drawer 240
Livingston, Texas 77351
(409) 327-4291

Fifth Case

Margaret Bean, et al. v. Southwestern Waste Management Corp., et al.; Civil Action No. H-79-2215; In the United States District Court for the Southern District of Texas, Houston Division; preliminary injunction tried in November of 1979 and reported at 482 F. Supp. 673 (S.D. Tex. 1979); trial on the merits in July 1984 (not reported), affirmed per curiam by the United States Court of Appeals for the Fifth Circuit on January 22, 1986

This civil rights class action brought under 42 U.S.C. §§ 1981, 1982 and 1983 alleged that two private companies, Browning-Ferris Industries, Inc. and Southwestern Waste Management Corp., whom I represented, discriminated on the basis of race in the selection of municipal landfill sites and that the Texas Department of Health similarly discriminated in approving such sites for use as municipal landfills. After a lengthy preliminary injunction hearing in November and December of 1979, the district court, per Judge Gabrielle McDonald, refused to grant either plaintiffs' motion for preliminary injunction or defendants' motion to dismiss. After considerable discovery, the case was tried on the merits in July 1984 before Judge John Singleton. The court found that there was no intent to discriminate on the part of the defendants and that the corporate defendants had engaged in state action. The judgment of the district court was affirmed on appeal. I was lead counsel for the corporate defendants and tried the majority of the case for all defendants at both the preliminary injunction hearing and the trial of the merits.

The case is significant because it involves the application of civil rights statutes to the siting of public facilities and the jurisdiction of federal courts over state agency decisions of this nature.

Judges

Preliminary injunction	Hon. Gabrielle K. McDonald United States District Court Southern District of Texas 515 Rusk Avenue, Houston, TX 77002 P. O. Box 61266, Houston, TX 77208 (713) 221-9630

Trial on the merits	Hon. John V. Singleton, Jr. Chief Judge United States District Court Southern District of Texas 11144 U.S. Courthouse 515 Rusk Avenue, Houston, TX 77002 (713) 221-9600

Counsel for State of Texas at preliminary injunction hearing
Thomas F. Aubry
Sullins, Johnston, Rohrback & Magers
3701 Kirby Drive, Suite 1230
Houston, Texas 77098
(713) 521-0221

Counsel for State of Texas at trial on the merits
Paul Rich
Assistant Attorney General
P. O. Box 12548, Capitol Station
Austin, Texas 78711
(512) 475-0425

Counsel for Plaintiffs
Ms. Linda McKeever Bullard
Law Offices of Linda McKeever Bullard
University Bank Plaza
5615 Kirby Drive, Suite 836
Houston, Texas 77005
(713) 523-3344

Counsel for City of Houston
Larry W. Schenk
Bean, Ford, Hearne & Schenk
115 South Martin
P. O. Box 1170
Kilgore, Texas 75662
(214) 984-2582

Sixth Case

Wyoming Refining Company v. United States Department of Interior, 547 F. Supp. 297 (D.Wyo. 1982)

Wyoming Refining Company brought this suit against the Department of Interior for charging prices in the sale of crude oil that were in excess of those permitted under Department of Energy regulations. The government moved to dismiss the action on the basis of sovereign immunity. The district court denied the government's motion, holding that the Economic Stabilization Act, which allowed overcharge actions against private sellers of crude oil, also applied to the Department of Interior's sales of crude oil. The court further held that Wyoming Refining Company had a right of action for wrongful exaction under the common law and that it need not exhaust its administrative remedies. I was lead counsel for Wyoming Refining Company.

This case is significant because to my knowledge it is the only case in which a court held that the government was liable for overcharges in the sale of crude oil under the Economic Stabilization Act. The government settled the case shortly before the court was to hear the plaintiff's motion for summary judgment.

Judge
Hon. Clarence A. Brimmer
United States District Judge
Federal Building
Cheyenne, Wyoming 82001
P. O. Box 1728
Jackson, Wyoming 83001
(307) 733-3515

Counsel for Defendants
Ms. Dina Lassow
Attorney, Department of Justice
10th and Pennsylvania Avenue, N.W.
Washington, D.C. 20530
(202) 633-3424

Local Counsel for Wyoming Refining Company
Stan Hathaway
Brent Kunz
Hathaway, Speight & Kunz
One Pioneer Center
2424 Pioneer Avenue
Cheyenne, Wyoming 82001
(307) 634-7723

Seventh Case

United States of America v.Baker's Port, Inc. and Baker Marine Corporation; Civil Action No. C-82-154; In the United States District Court for the Southern District of Texas, Corpus Christi Division

This enforcement action was brought by the United States on behalf of the Corps of Engineers against Baker's Port, Inc. and Baker Marine Corporation for constructing two roads in an alleged wetlands area. The case involves a number of important issues such as the right of the defendant to a jury trial, whether estoppel by deed can be asserted against the federal government, and the scope of the Corps of Engineers' authority over areas alleged to be wetlands or tidally inundated under the Rivers and Harbors Act and the Clean Water Act.

During the course of the proceedings, Baker's Port asserted that the Corps had refused to consider a permit application submitted by it after the construction of the roads in question. The Corps contended that it had no obligation to consider the after-the-fact permit application because an enforcement action was pending. In an unpublished memorandum opinion dated March 30, 1983, the district court ordered the Corps to consider Baker's Port's permit for processing and evaluation. Approximately a year-and-a-half later, after extensive briefing and a public hearing, the Corps granted Baker's Port's permit application. The case was later settled. I was lead counsel for Baker's Port both in district court and in the administrative proceeding before the Corps of Engineers.

Judge
Hon. Hayden W. Head, Jr.
United States District Court
Southern District of Texas
United States Courthouse
521 Starr Street
Corpus Christi, Texas 78401
(512) 888-3148

Counsel for Plaintiff
David E. Dearing
Attorney, Environmental Defense Section
Land and Natural Resources Division
U.S. Department of Justice - Stop 219
Federal Building - Room 4445
12th and Pennsylvania Avenue, N.W.
Washington, D.C. 20530
(202) (FTS) 633-5777

Ms. Frances H. Stacy
Assistant United States Attorney
Bob Casey Federal Building and
U.S. Courthouse
515 Rusk Avenue
P. O. Box 61129
Houston, Texas 77002

Eighth Case

Sun Company, Inc. v. The United States Department of Energy; Civil Action No. 3-83-0438-F; In the Northern District of Texas, Dallas Division

Sun Company, Inc. and Sun Exploration and Production Company v. The United States of America, The United States Department of Energy, Donald Hodel, James A. Martin, Fred C. Howell, Jr. and Carl A. Carrallo; Civil Action No. 83-204; In the United States District Court for the District of Delaware

Sun Exploration and Production Company originally brought suit in the Northern District of Texas seeking temporary injunctive relief to prevent the Department of Energy from violating the terms of a consent order entered into between Sun and DOE. In an unpublished memorandum and order dated April 7, 1983, that court denied Sun's request for temporary injunctive relief, denied the government's motion to dismiss for failure to exhaust administrative remedies and for lack of ripeness as to all but one of Sun's claims for relief, and held that venue was improper in the Northern District of Texas and that the case should be transferred to the District Court of the District of Columbia.

Because Sun did not want to litigate in the District of Columbia against the Department of Energy it dismissed the action and filed suit in the United States District Court of the District of Delaware seeking declaratory and permanent injunctive relief and damages. The government moved to dismiss the Delaware action for improper venue and want of jurisdiction. In an unpublished memorandum and order dated November 28, 1983, the Delaware District Court held that venue was proper in that district, denied the government's motion to dismiss on ripeness and exhaustion grounds, and held that Sun could properly pursue its claim against the government for damages under the Tucker Act.

A number of energy producers, refiners and resellers have entered into consent decrees with the Department of Energy settling alleged violations of the Department's former price and allocation regulations. This case is significant because it is the first attempt I am aware of by a private party to force the government to abide by the terms of such an agreement.

I represented Sun Exploration and Production Company before the District Court in Dallas and Sun Exploration and Production Company and Sun Company, Inc. before the District

Court of Delaware. Because of an issue of conflict with another client of the firm, another law firm continued to represent the Sun companies on the merits before the District Court in Delaware.

Judge in Texas action
Hon. Robert W. Porter
United States District Court
Northern District of Texas
1100 Commerce, Room 15E26J
Dallas, Texas 75242
(214) 767-0784

Judge in Delaware action
Hon. Walter K. Stapleton
United States Court of Appeals
Third Circuit
Federal Building
Lock Box 33
844 King Street
Wilmington, Delaware 19801
(302) 573-6165

Local Counsel for Sun Company and Sun Exploration
William O. LaMotte, III
Morris, Nichols, Arsht & Tunnell
Twelfth & Market Streets
P. O. Box 1347
Wilmington, Delaware 19899
(302) 658-9200

Co-counsel for Sun Company and Sun Exploration
C. L. Carpenter
Sun Exploration and Production Company
P. O. Box 2880
8150 North Central Expressway
Campbell Center II
Dallas, Texas 75221
(214) 736-9100

Counsel for Department of Energy
Larry P. Ellsworth
Office of General Counsel
Department of Energy
1000 Independence Avenue, S.W.
Washington, D.C. 20585
(202) 252-5417

Ninth Case

Cities Service Company v. Department of Energy, 520 F. Supp. 1132 (D. Del. 1981), aff'd per curiam (TECA 1982)

This was an action seeking declaratory relief that certain crude oil purchases and sales engaged in by Cities Service and all other transactions of a similar nature were treated by Cities Service in a manner authorized by DOE's regulations. The district court dismissed Cities Service's complaint for lack of a justiciable case or controversy because Cities Service failed to satisfy the ripeness doctrine. The Temporary Emergency Court of Appeals affirmed. I represented Cities Service Company in the case.

The case is not significant because of anything I did but because of the district court opinions in it and two other cases, Coastal States Gas Corporation v. Department of Energy, 84 F.R.D. 278 (D. Del. 1979); 495 F. Supp. 1300 (D. Del. 1980) and Texas Energy Reserve Corporation v. Department of Energy, 535 F. Supp. 615 (D. Del. 1982), aff'd, 710 F.2d 814 (1983), in which I also represented the losing plaintiffs. These opinions explained the relationship between the prudential, court-made, doctrine of ripeness and the constitutional aspect of ripeness as a facet of the case or controversy requirement of Article III of the Constitution.

Judge
Hon. Murray M. Schwartz
United States District Court
District of Delaware
Wilmington, Delaware
(302) 573-6355

Local Counsel for Plaintiff
William O. LaMotte, III
Morris, Nichols, Arsht & Tunnel
Twelfth and Market Streets
Wilmington, Delaware 19899
(302) 658-9200

Co-counsel for Plaintiff
Gerald H. Barnes
Cities Service Company
P. O. Box 300
Tulsa, Oklahoma 74102
(918) 586-2211

Counsel for Defendant
Judith A. Mather
Department of Energy
1000 Independence Avenue, S.W.
Washington, D.C. 20585
(202) 586-5000

Tenth Case

Roger H. Stoner v. Joe Glenn Thompson; Cause No. 1,091,360; in the 61st Judicial District Court of Harris County, Texas, tried in June of 1977; 570 S.W.2d 511 (Tex. Civ. App. -- Waco 1978), aff'd, 578 S.W.2d 679 (Tex. 1979)

This was an action brought by Mr. Stoner for specific performance of an alleged agreement to buy the majority interest of the stock in a corporation that owned a radio station. I represented Arnold and Audry Malkan who made a tender offer for the same stock, which was accepted by 51% of the owners. My clients intervened seeking injunctive and declaratory relief and damages against Stoner for interference with their contractual relationship with the other stockholders. The trial court granted my clients all the relief requested, and the trial court's judgment as to my clients was affirmed by both the Court of Appeals and the Texas Supreme Court.

The case is significant because the Supreme Court's opinion resolved the somewhat arcane but nevertheless then undecided distinction among a no-answer default judgment, a judgment *nihil dicit* and a post-answer default judgment.

Judge
Hon. Shearn Smith
Judge of the 61st District Court
Harris County Civil Courts Bldg.
301 Fannin Street
Houston, Texas 77002
(713) 221-6261

Counsel for Defendant/Counterclaimant, Texas Media Group, Inc.
Hall E. Timanus
Andrews & Kurth
4200 Texas Commerce Tower
Houston, Texas 77002
(713) 220-4200

Counsel for Plaintiff/Cross-Defendant
Patrick J. Horkin, Jr.
Horkin & Horkin
326 Poenisch Street
P. O. Box 8249
Corpus Christi, Texas 78412
(512) 993-1960

FINANCIAL STATEMENT

NET WORTH

of Simeon T. Lake III and Carol I. Lake and children (March 31, 1988)

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS	
Cash on hand and in banks	250,000
U.S. Government securities—add schedule	0
Listed securities—add schedule	267,265
Unlisted securities—add schedule	0
Accounts and notes receivable:	
Due from relatives and friends	0
Due from others	0
Doubtful	0
Real estate owned—add schedule	955,000
Real estate mortgages receivable	0
Autos and other personal property	15,000
Cash value—life insurance	0
Other assets—itemize:	
Partnership interests	112,236
F&J Capital Acct.	116,100
401 (K) Account	53,785
IRA Account	15,210
Total assets	1,784,596

LIABILITIES	
Notes payable to banks—secured	0
Notes payable to banks—unsecured	0
Notes payable to relatives	0
Notes payable to others	0
Accounts and bills due	
Unpaid income tax (1987)	20,000 (est.)
Other unpaid tax and interest	
Real estate mortgages payable—add schedule	343,648
Chattel mortgages and other liens payable	0
Other debts—itemize:	
Accrued tax liability $13,381 neg cap accts balances + 30,000 est. 4/15/88 payment for 1988 taxes	43,381
Total liabilities	407,029
Net worth	1,377,567
Total liabilities and net worth	1,784,596

CONTINGENT LIABILITIES	
As endorser, comaker or guarantor	0
On leases or contracts 1/	
Legal Claims	0
Provision for Federal Income Tax 2/	
Other special debt	0

GENERAL INFORMATION	
Are any assets pledged? (Add schedule.) (See Sched. D)	Yes
Are you defendant in any suits or legal actions?	No
Have you ever taken bankruptcy?	No

1/ As a partner of Fulbright & Jaworski, I am liable for various lease and other obligations. After my appointment becomes effective, I will terminate all relations with the Firm, including all liabilities for Firm obligations.

2/ See liabilities.

Schedules to Financial Statement of Simeon T. Lake III and Carol I. Lake and children

(March 30, 1988)

A. **Real estate**:

Home:	7516 Briar Rose, Houston, Texas (less 6% sales commission)	$211,500.00
Home:	6118 Riverview Way, Houston, Texas	450,000.00
Land:	65 acres in Washington County, Texas	130,000.00
Rental Property:	4004 Marlowe, Houston, Texas	100,000.00
	7104 and 7106 Sherman Street, Houston, Texas	50,000.00
	1206 West Drew, Houston, Texas (7/15 undivided interest)	21,000.00
.136 royalty interest in U.S. Operating, Inc. Amanda No. 1, Washington County, Texas		2,500.00
		$955,000.00

B. **Limited Partnership Interests**

Metropolitan 4W Limited[1]	-0-
Metropolitan Near Town 1 Limited[1]	-0-
Metropolitan Interest Limited[1]	$42,367.00
Metropolitan 8.5 Limited[1]	49,592.00
Metropolitan 10 Limited[1] [2]	19,977.00
1981 Coastal Limited Partnership	300.00
	$112,236.00

---

[1] These values are based upon the capital account from balances shown on the 1987 Schedule K-1's furnished me by the managing general partner. I have no personal liability for the debts of any of these partnerships. For those partnerships in which I had a negative capital account, I have listed the value as zero and have included 28% of the negative capital account balance ($13,381.00) in the Liabilities column of this statement as accrued tax liabilities. The first two properties are the subject of an option to sell, which, according to the managing general partner, would result in my receipt of $105,333.65 and $6,424.44, respectively at the closings of the sales.

[2] The General Partner in this partnership has filed a petition under Chapter 11 of the Bankruptcy Code.

Schedules to Financial Statement
of Simeon T. Lake III and Carol I. Lake and children
(March 30, 1988)

C. Listed Securities

	Shares or Amount	Price per Share as of 3/30/88	Value
American Medical International (self)	958	$16.75	$ 16,047
ARMCO (wife)	207	11.00	2,277
AT&T (joint and children)	120	26.50	3,180
Baker Hughes (joint)	200	17.75	3,550
Columbia Gas Transmission (wife)	91	27.50	2,503
Exxon (wife and children)	4,453	41.75	185,913
Golden Valley Microwave (wife)	100	25.625	2,563
Luby's Cafeterias (wife)	150	22.125	3,319
Manor Care (wife)	100	12.50	1,250
Medical Care International (self)	130	7.125	926
NCR (child)	10	57.00	570
Schlumberger (wife)	150	34.375	5,156
Sears Roebuck (wife)	100	37.625	3,625
Southwestern Bell (joint and children)	372	36.25	13,485
Southwestern Public Service Corp. (joint)	496	24.75	12,276
Valero (self)	100	6.25	625
Washington State PPSS Bonds (joint) Series 1980, 9% due 7/1/97	$10,000		10,000
			$267,265

Schedules to Financial Statement
# of Simeon T. Lake III and Carol I. Lake and children
(March 30, 1988)

D. Real Estate Mortgages Payable

Charles F. Curry & Co. (7516 Briar Rose)	40,750.00
Brian E. O'Neill and Kathryn L. O'Neill (6118 Riverview Way)	200,000.00
United Capital Mortgage Co. (6118 Riverview Way)	102,898.00
	343,648.00

3705D

AMERICAN BAR ASSOCIATION

Standing Committee on Federal Judiciary
1800 M Street, NW
Washington, DC 20036
(202) 331-2210

CHAIRMAN
Harold R. Tyler, Jr.
30 Rockefeller Plaza
New York, NY 10112

FIRST CIRCUIT
Ralph I. Lancaster, Jr.
One Monument Square
Portland, ME 04101

SECOND CIRCUIT
William E. Willis
125 Broad Street
New York, NY 10004

THIRD CIRCUIT
Jerome J. Shestack
Suite 3600
1600 Market Street
Philadelphia, PA 19103

FOURTH CIRCUIT
James A. Howard, Sr.
1400 First Virginia Bank Tower
101 St. Paul's Boulevard
Norfolk, VA 23510

FIFTH CIRCUIT
Lloyd Lochridge
Suite 1300
919 Congress Avenue
Austin, TX 78701

SIXTH CIRCUIT
John C. Elam
52 East Gay Street
Columbus, OH 43215

SEVENTH CIRCUIT
Joan M. Hall
Suite 4300
One IBM Plaza
Chicago, IL 60611

EIGHTH CIRCUIT
James W. Hewitt
Post Office Box 80268
1815 Y Street
Lincoln, NE 68501

NINTH CIRCUIT
J. David Andrews
1900 Washington Building
Seattle, WA 98101

Samuel L. Williams
45th Floor
355 South Grand Avenue
Los Angeles, CA 90071

TENTH CIRCUIT
James A. Clark
Suite 1100
303 East 17th Avenue
Denver, CO 80203

ELEVENTH CIRCUIT
M. Roland Nachman, Jr.
Post Office Box 78
2 Dexter Avenue
Montgomery, AL 36101

DISTRICT OF COLUMBIA CIRCUIT
James J. Bierbower
International Square
Suite 1275
1875 I Street, NW
Washington, DC 20006

FEDERAL CIRCUIT
John D. Lane
Suite 600
1666 K Street, NW
Washington, DC 20006

BOARD OF GOVERNORS LIAISON
Sharp Whitmore
2085 Gird Road
Fallbrook, CA 92028

STAFF LIAISON
Irene R. Emsellem
2nd Floor, South Lobby
1800 M Street, NW
Washington, DC 20036
(202) 331-2210
ABA/NET: ABA 461

April 1, 1988

CONFIDENTIAL

The Honorable Joseph R. Biden, Jr.
Chairman, United States Senate
Committee on the Judiciary
Washington, D.C. 20510

Re: SIMEON T. LAKE, III
United States District Court
for the Southern District of Texas

Dear Senator Biden:

Thank you for affording this Committee an opportunity to express an opinion pertaining to the nomination of Simeon T. Lake for appointment as Judge of the United States District Court for the Southern District of Texas.

Our Committee is of the unanimous opinion that Mr. Lake is "Well Qualified" for this appointment.

Sincerely yours,

Harold R. Tyler, Jr.
Chairman

cc: All Committee Members

MAY 1 6 1989

RICHARD A. SCHELL

Birth:	March 10, 1950	Dallas, Texas
Legal Residence:	Texas	
Marital Status:	Married	Janice Sue Schell 2 children
Education:	1968 - 1972	Southern Methodist University B.A. degree
	1972 - 1975	Southern Methodist University School of Law J.D. degree
Bar:	1975	Texas
Experience:	6/75 - 2/76	199th Judicial District Court Court Coordinator
	9/75 - 5/76	Southern Methodist University Instructor
	2/76 - 12/76	Collin County District Attorney's Office Assistant District Attorney
	1/77 - 12/81	Boyd, Veigel & Gay Associate
	1982 - 1986	Judge, County Court at Law Collin County Commissioners Court
	1986 - present	Judge, 219th Judicial District Court State of Texas

Office:

Collin County Courthouse
McKinney, Texas 75069
214 548-4402

Home:

1315 E. 15th Street
Plano, Texas 75074
214 424-3231

To be United States District Judge for the Eastern District of Texas

SENATE JUDICIARY COMMITTEE QUESTIONNAIRE

I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. Full name (include any former names used.)

Richard Alexander Schell

2. Address: List current place of residence and office address(es).

residence: 1315 E. 15th Street
Plano, Texas 75074

office: 219th Judicial District Court
Collin County Courthouse
McKinney, Texas 75069

3. Date and place of birth.

Born March 10, 1950 in Dallas, Texas.

4. Marital Status (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).

Married to Janice Sue Schell
Maiden name: Roper

Occupation: Preschool teacher (part-time)
Children's Discovery Center
Christ United Methodist Church
2640 Glencliff Drive
Plano, Texas 75075

5. Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.

Southern Methodist University - Dallas, Texas

Sept. 1968 to May 1972 - Bachelor of Arts Degree granted May 21, 1972
Sept. 1972 to May 1975 - Juris Doctor Degree granted May 18, 1972

6. Employment Record: List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including farms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.

From	To	Name of Employer (business, firm, etc.)	Type of Work
6/72	8/72	Southwestern Company Nashville, Tennessee	door to door sales (summer employment between college and law school)
5/73	7/74	Plano Title Company Plano, Texas	land title searches (part-time employment during law school)
7/74	10/74	Schell Insurance Plano, Texas	insurance and real estate sales (part-time employment with my father during law school)
6/75	2/76	Collin County Texas McKinney, Texas	court administrator (employment before and immediately after bar exam)
9/75	5/76	SMU Law School Dallas, Texas	law school instructor
2/76	1/77	Collin County Texas District Attorney McKinney, Texas	assistant district attorney
1/77	1/82	Boyd, Veigel & Gay, Inc. McKinney, Texas	private law practice
1/82	2/86	Collin County Texas McKinney, Texas	County Court at Law Judge
2/86	present	State of Texas	State District Judge

In addition to the above employment history, I have been a partner in the following partnerships:

1. From 1980 until 1985, when I sold my interests, I was a partner in three oil drilling partnerships with college friends. The names of the partnerships were "Prairie Partners", "Crossville Partners" and "Prairie Mineral Partners".

2. Since 1985, I have been a partner in a real estate investment partnership with three other people. The name of the partnership is "Ovilla Road Joint Venture." My partners and I own an undeveloped parcel of land located in the Dallas area.

3. Also in 1985, I assisted a dentist friend of mine with the construction "finish-out" of his medical office. He paid me for my time, work and materials. The work was done after hours and on weekends.

7. Military Service: Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.

I have had no military service.

8. Honors and Awards: List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.

I know of none that would be of interest to the Committee.

9. Bar Associations: List all bar associations, legal or judicial-related committees or conferences of which you are or have been a member and give the titles and dates of any offices which you have held in such groups.

- State Bar of Texas
- American Bar Association
  - Appointed by Texas Supreme Court Chief Justice Jack Pope to serve as a delegate to the 1984 ABA Annual Meeting for the Judicial Administration Division's National Conference of Special Court Judges
- Collin County Bar Association
- Plano Bar Association
  - President - 1978-79
  - Treasurer - 1977-78
- Texas College of the Judiciary - 1981

10. Other Memberships: List all organizations to which you belong that are active in lobbying before public bodies. Please list all other organizations to which you belong.

I am not a member of any organization that is active in lobbying before public bodies.
I am a member of the First United Methodist Church of Plano, Texas; the Collin County Republican Men's Club; the SMU Local Alumni Student Recruitment Committee; and the Heritage Farmstead Museum in Plano, Texas.

11. Court Admission: List all courts in which you have been admitted to practice, with dates of admission and lapses if any such memberships lapsed. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.

    All courts of the State of Texas - licensed Oct. 21, 1975

    United States District Court for the Eastern District of Texas - admitted April 27, 1978

    United States Court of Appeals for the Fifth Circuit - admitted October 1, 1981

    I have had no lapses in my law license or in these memberships.

12. Published Writings: List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.

    I have not written or edited any published material. In celebration of the Bicentennial of the U. S. Constitution, I did make several speeches to civic groups on the historical events that led to the drafting of our Constitution. These speeches did not involve constitutional law or legal policy.

13. Health: What is the present state of your health? List the date of your last physical examination.

    My health is excellent. My last physical examination was on March 15, 1988.

14. Judicial Office: State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

    Judge, County Court at Law - January 1982 to January 1986 In the fall of 1981, I was appointed by the Collin County Commissioners Court to the position of judge of one of our county courts at law. In 1982, I was elected to a four year term expiring December 31, 1986. The court is a general jurisdiction court with jurisdiction over civil, misdemeanor criminal, probate, mental illness and eminent domain matters. The civil jurisdiction is limited to $50,000.00 amount in controversy. While serving as judge of that court, I presided over jury trials, both civil and criminal, in addition to non-jury trials and administrative duties. The administrative responsibilities included serving on the county's Juvenile Board and ~~Bail~~ Bond Board.

Judge, 219th Judicial District Court - February 1986 to present. In January of 1986, I was appointed by Texas Governor Mark White to the office of state district judge. In 1986, I was elected to a four year term expiring December 31, 1990. This court is a general jurisdiction state district court with jurisdiction over civil, felony criminal, juvenile and domestic relations cases. There is no limit on the amount in controversy in civil cases. I preside over jury trials, both civil and criminal, in addition to non-jury trials and administrative duties. The administrative responsibilities for a state district judge are provided by law and include appointing and overseeing the county auditor, the county purchasing agent, the adult probation director and the juvenile probation director as well as serving on the Juvenile Board, the Purchasing Board and the Bail Bond Board.

15. Citations: If you are or have been a judge, provide: (1) citations for the ten most significant opinions you have written; (2) a short summary of and citations for all appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings; and (3) citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, please provide copies of the opinions.

(1) Given the docket loads and the fact that we are not furnished with law clerks, state trial judges in Texas do not write opinions. I have not issued any written, formal opinions as a trial judge.

(2) During my six years on the bench, I have been reversed twice. Both reversals were in connection with granting motions for summary judgment.
Interfirst Bank Dallas, N.A. v. James T. Chao, et ux, No. 10-85-031-CV (A copy of the Court of Appeals opinion is attached.) This case involved a summary judgment granted in favor of the plaintiff bank for nonpayment of a VISA account by the defendant. I had granted the

motion for summary judgment because I found the defendant's affidavit in opposition to the motion to contain subjective opinions and conclusory statements rather than setting forth facts. The appeals court disagreed and reversed and remanded the case for trial on the issue of whether the VISA account was past due or not.

Ammie Stimpson v. Plano Independent School District, Dr. H. Wayne Hendrick, and Martha Hunt, in their individual and official capacities No. 05-86-01245-CV (A copy of the Court of Appeals opinion is attached.) A summary judgment was granted on behalf of the school district pursuant to the Texas Tort Claims Act. This portion of the summary judgment was unanimously affirmed by the appeals court. In a divided decision, the appeals court reversed and remanded for trial that portion of the summary judgment granted in favor of the individual defendants. The court found that a fact issue existed on whether these school officials acted within or outside the scope of their employment. I had found that, although the plaintiff's petition initially states that Hendrick and Hunt are being sued in both their official and individual capacities, the plaintiff failed to plead any facts to support suit against them in their individual capacities. As the dissent points out, the petition uses the phrase "by and through" in referring to the actions of the defendants.

(3) I have not issued any written opinions on federal or state constitutional issues.

16. Public Office: State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.

I have never held public office other than judicial offices. I have never been an unsuccessful candidate for any public office.

17. Legal Career:

a. Describe chronologically your law practice and experience after graduation from law school including:

1. whether you served as clerk to a judge, and if so, the name of the judge, the court, and the dates of the period you were a clerk;

2. whether you practiced alone, and if so, the addresses and dates;

3. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each.

LAW CLERK - COURT OF APPEALS FOR THE FIFTH DISTRICT OF TEXAS AT DALLAS - October 1974 to April 1975
Dallas County Courthouse
Dallas, Texas 75201

Although I did not serve as a law clerk after graduation from law school, I did serve as a law clerk during my third year of law school. Since part of question 17 pertains to clerkships, I wish to briefly mention that I served as a clerk for the Court of Appeals for the Fifth District of Texas at Dallas. During law school, I worked approximately twenty hours per week between and after classes on a volunteer basis. At that time, the court had three justices but was budgeted for only two paid law clerks. I served as a third clerk. My duties included reading appellate briefs, researching the law and drafting opinion memoranda for the justices. All of the justices who were members of the court at the time, and for whom I worked, are now retired from the Court of Appeals. Their names and current addresses and phone numbers are as follows:

Chief Justice Claude Williams
Of Counsel to Brown & Associates
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214/696-9900 (work)
214/357-9872 (home)

Justice Clarence Guittard
Guittard, Hyden & Guittard
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Justice Ted Akin
Akin & McMullen
250 Lincoln Center 3
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COURT COORDINATOR - 199th JUDICIAL DISTRICT COURT - June 1975
to February 1976
Collin County Courthouse
McKinney, Texas 75069

While studying for the Texas Bar Exam, and for a few months thereafter, I worked as a court coordinator for the 199th District Court in Collin County, Texas. This position was partially funded by a federal grant to improve court efficiency in the disposition primarily of criminal cases. My responsibilities included the institution of docket and schedule coordination for hearings, trials, criminal pleas and docket calls. Also, I gathered and reported case statistics to the state. The judge at the time was retired District Judge Tom Ryan: 1519 Hillside Dr., Plano, Texas - 214/423-2493.

SMU LAW SCHOOL INSTRUCTOR - September 1975 to May 1976
SMU Campus
Dallas, Texas 75275

During the time that I served as a court coordinator and later as an assistant district attorney, I was also employed by the Law School at Southern Methodist University to teach a weekly class in research methods and legal writing. The course was taught to first year students. Classroom instruction focused on legal research and brief-writing techniques. I also prepared lessons and graded students' assignments.

ASSISTANT DISTRICT ATTORNEY - February 1976 to December 1976
Collin County District Attorney
Collin County Courthouse
McKinney, Texas 75069

After receiving the results of the bar exam and becoming licensed on October 21, 1975, I remained as a court coordinator for a few months until my replacement was hired. I then became an assistant district attorney for who was then, and is now, the district attorney - Tom O'Connell (214/548-4323). My duties included reviewing police offense reports, interviewing prosecution witnesses and representing the state in trial. Among the types of cases which I prosecuted were drug possession, DWI, weapons violations, theft, assault and welfare fraud.

PRIVATE LAW PRACTICE - January 1977 to December 1981
Boyd, Veigel & Gay
218 E. Louisiana St.
McKinney, Texas 75069
214/542-0191

While serving as an assistant district attorney, I accepted an offer to associate with the firm of Boyd, Veigel & Gay, Inc. (now renamed as Boyd, Veigel & Hance). Most of my work with the firm involved civil matters, although I represented some criminal defendants. A large portion of my responsibility was to advise local government clients on federal laws and regulations governing various federal projects in which they had an interest. I advised these clients on matters including environmental statutes, federal highway regulations, assisted housing regulations and civil rights statutes with respect to police misconduct.

The above chronology describes my law practice and experience up until the time I took office as a judge in 1982. My judicial experience is described in my answer to question 14.

b. 1. What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?

2. Describe your typical former clients, and mention the areas, if any, in which you have specialized.

Excluding the class I taught at SMU Law School, my practice prior to becoming a judge consisted of one year as a criminal prosecutor and five years as a lawyer in private practice. As a prosecutor in 1976, my duties required almost daily trial work. Most of my time was spent either preparing for trial or actually in a trial representing the state. When I joined the law firm of Boyd, Veigel & Gay, the character of my practice changed from criminal trial work to primarily a civil office practice. Based upon the needs of the firm and the available opportunities within the firm, my practice was largely advising and counseling local government clients. In addition, I worked on a general assortment of civil tort and contract matters.

Several of the local government clients for whom I worked had employed the firm for legal advice and guidance in securing federal projects. Much of this representation was ongoing when I joined the firm in January 1977 and continued after I left in December of 1981. For example, the firm represented three suburban cities and our county in the development of a federal highway project located in the northern part of the

Dallas metropolitan area. The 18 mile long project will be a major east/west traffic artery when completed. I had the responsibility for advising our clients on the applicable environmental laws such as the National Environmental Policy Act (NEPA), Counsel on Environmental Quality regulations and Federal Highway Administration regulations designed to implement NEPA. One of our goals was to assist the state and federal authorities in the development of an environmental impact statement that could withstand a court challenge. I worked with the firm's senior partner in negotiations with the State Department of Highways and Public Transportation, the Federal Highway Administration, right-of-way landowners and other affected cities and counties. We negotiated donations of right-of-way with landowners and identified alternative route possibilities. This highway project has been adopted as part of the state's master plan and work on the first phase is currently under contract. Several years after I left the firm, a lawsuit was instituted to test the adequacy of the environmental impact statement. That suit is now pending in federal court in Dallas.

The firm also represented an area water district in environmental litigation over the construction of a reservoir in east Texas. Again, I had the responsibility for advising our client on applicable environmental laws and Army Corps of Engineers regulations.

Because of the considerable amount of time I spent on these and other legal matters which required an understanding of NEPA and federal agency regulations, I developed some specialized ability in the environmental law area.

c. 1. Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates.

I appeared in court regularly as an assistant district attorney in 1976 and, of course, as a trial judge for the past six years since 1982. During my years in private practice from 1977 to 1982, I appeared in court only occasionally.

2. What percentage of these appearances was in:
   (a) federal courts;
   (b) state courts of record;
   (c) other courts.

Although I have worked on cases pending in federal court, all of my personal "appearances" have been in state courts of record.

3. What percentage of your litigation was:
   (a) civil;
   (b) criminal.

   If I include the years I have spent as a trial judge, my litigation experience has been about equally divided between civil and criminal. Excluding my judicial experience, my litigation has been roughly 90% criminal and 10% civil, if I include contested civil hearings.

4. State the number of cases in courts of record you have tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

   I have tried approximately 50 cases to verdict as a prosecutor: 30 as sole counsel, 10 as chief counsel and 10 as associate counsel.

5. What percentage of these trials was:
   (a) jury; -- 40%
   (b) non-jury. -- 60%

18. Litigation: Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

    (a) the date of representation;
    (b) the name of the court and the name of the judge or judges before whom the case was litigated; and
    (c) the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

    NOTE: Most of my litigation experience and my legal career has been as a trial judge for over six years. During that time, I have tried approximately 150 jury trials in addition to numerous nonjury trials and other hearings. Therefore, the first five cases which I have included in the answer to this question are cases which were tried in my court. The next three cases were cases in litigation which I worked on while I was in private practice. The last two cases were cases which I tried as a criminal prosecutor. I believe the following cases offer representative examples of the types of litigated matters which I have handled.

FIRST CASE

Neal R. Porter and Debra A. Porter, Individually and as Next Friend of Rodney Dale Porter, a minor, Plaintiffs

V

Glenn C. Mitchell, M.D., Don Mitchell, M.D., Mitchell Clinic and Maternity Hospital, Patsy McClellan, Pinkey Benton, Dottie Scalf, L.V.N., Bea Barnes, Carolyn Morrison and Shirley Foxcroft, Defendants

No. 219-008-82

219th District Court, Collin County

Date of trial: May 15, 1986 to June 2, 1986

This was a medical malpractice case tried to a jury over a period of 10 days. The parents of a minor child brought this action against the doctors, nurses and hospital alleging negligence in the obstetrical care of the mother and child. The parents alleged that the defendants failed to properly monitor and detect signs of fetal distress during labor and delivery. As a result of the alleged negligence, the child suffered brain damage. Prior to trial, the doctors and the hospital settled with the plaintiffs. The remaining nurses proceeded to trial. The jury found the settling doctors were negligent and that their negligence was a proximate cause of the damages sustained by the child, and awarded $1,755,511.00 in damages. The jury found that the nurses were not negligent. Therefore, judgment was entered for the nurses. The case was appealed by the plaintiffs and affirmed in an unpublished opinion on June 19, 1987. No. 05-86-00937-CV.

The primary importance of this case was, of course, the effect of its outcome on the lives of the child and his parents and on the nurse-defendants. In order to insure some compensation, the plaintiffs had settled with the doctors. As it turned out, that settlement was for less than 25% of what the jury awarded. The case points up the high stakes involved for both sides in settlement negotiations.

From the judge's perspective, however, there was an interesting evidentiary matter concerning the application of evidence rule 407. Under 407, evidence of subsequent remedial measures is not admissable to prove negligence in connection with the event. One of the plaintiff's principle contentions of negligence was that the medical personnel failed to record the child's fetal heart rate during labor. New procedures to record fetal heart rates were implemented by the clinic's doctors following this lawsuit, which was filed in 1982. The trial occurred in 1986. At trial, one of the nurses was asked on cross-exam whether the procedure regarding the recordation of fetal heart rates had changed over the past 25 years at the clinic. The period of time encompassed by the question included the subsequent remedial measure to record fetal heart rates after 1982. This placed the witness in the untenable position of having to either reveal the subsequent remedial measure or deny them and then be impeached. I sustained an objection to the question. A party should not be allowed to use the remedial measure itself to set up the impeachment. This would defeat the purpose of rule 407.

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SECOND CASE

The State of Texas

V

John Wesley Zaidie

No. F86-245-HS

219th District Court, Collin County

Date of trial: November 17, 1986 to December 2, 1986

This was a murder case tried to a jury over a period of 10 days. The defendant was accused of intentionally causing the death of his wife. The jury found the defendant guilty of murder and assessed his punishment at 75 years in the Texas Department of Corrections and a fine of $10,000.00.

In order to state what I found to be important about the case, the following brief statement of facts is necessary: Police responded to a call from bystanders who heard screams coming from an apartment and saw a knife thrown out the front door. Upon arrival 10 minutes later, officers observed the knife lying on the ground just outside the apartment door. The knife had blood on it as did the door. After knocking, the officer opened the unlocked door and saw a man sitting on the floor with labored breathing and blood on him. The man, the defendant in this case, was holding a handgun. A woman, with blood on her and appearing to be dead, was also seen lying on the floor in the same room. The officers observed a hammer next to the woman's head along with spent shell casings.

The police then searched the apartment to see if there were other victims or if a killer was still on the premises. After securing the premises, homicide investigators arrived and an evidentiary search was begun which lasted several hours.

Of particular significance to me during the trial was a motion to suppress certain physical evidence, including the gun, hammer and shell casings, found at the murder scene. The defense contended that the seizure of the handgun, the hammer and the shell casings violated the Supreme Court's holding in Mincey v. Arizona 437 US 385, 57 L Ed 2d 290, 98 S Ct 2408 (1978) and Thompson v. Louisiana 469 US 17, 83 L Ed 2d 246, 105 S Ct 409 (1984). A hearing was held outside the jury's presence.

In Mincey and Thompson, the Supreme Court held that when police come upon the scene of a homicide, they may make a prompt warrantless search of the area to see if there are other victims or if a killer is still on the premises. Furthermore, the police may seize any evidence that is in plain view during the course of their legitimate emergency activities. Nevertheless, the Court held that there is no "murder scene" exception to the warrant requirement of the 4th Amendment whereby police could, after the initial emergency search, continue with an exhaustive and general exploratory search for evidence.

Some of the evidence offered by the prosecution in Mincey and Thompson was found by opening dresser drawers and pulling up carpet. On the other hand, in the Zaidle case, the disputed evidence had been in plain view during the initial emergency search. Notwithstanding this fact, the defense argued that the objects were not "seized" until the later evidentiary search. I denied the motion to suppress on the basis of testimony from one of the officers who made the initial emergency search. He testified that although he did not physically pick up the handgun, hammer or shell casings, he considered them to be evidence when he secured the apartment and stood guard until homicide investigators arrived. In my opinion, this constituted a "seizure" by him of those items in plain view. I believe the admission of that evidence comports with the holdings in Mincey and Thompson.

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THIRD CASE

The State of Texas

V

Wilford Daniel White

No. I-347-84-S

County Court at Law No. 1, Collin County

Date of trial: June 18, 1984 to June 21, 1984

The defendant in this case was accused of the misdemeanor offense of assault resulting from an altercation with another motorist.

The defendant and the complaining witness were traveling in separate vehicles and in the same direction on a two-lane road. After passing each other several times, the two vehicles came to a stop at a stop sign. The defendant exited his car and walked back to the complaining witness, who was still sitting in his car. The complaining witness rolled down his window. The two drivers exchanged words, whereupon the defendant admittedly struck the complaining witness in the face while he was still seated in his car. The case was tried to a jury. The accused asserted the defense of self-defense, arguing that he reasonably believed the force used was immediately necessary to protect himself and the occupants of his car. The defendant testified that he was afraid that the complaining witness would follow him and continue to drive recklessly, thereby endangering the defendant and his passengers. The jury found the defendant not guilty.

The particular significance of the case from the judge's standpoint had to do with the defendant's offer of character evidence of the complaining witness/victim. Texas Rule of Evidence 404 permits evidence of character for violence of the victim of assaultive conduct offered on the issue of self-defense by the person accused of the assault.

In a hearing outside the jury's presence, witnesses for the defense testified to various incidents of aggressive driving and an animal mutilation on the part of the complaining witness. The state's attorney contended that the type of violence contemplated by Rule 404 requires physical contact with another person. I disagreed with such a narrow reading of the rule and admitted the evidence as proof of violent character.

The case illustrates how a well-prepared criminal defense, with intelligent use of the rules of evidence, can be designed to shift the focus of the trial away from the accused and onto the accuser.

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Attorneys for the Defendant

FOURTH CASE

In the Matter of the Marriage of Felix Perera and Indranie Perera, and in the Interest of Chalmanthi Perera

No. 219-081d-85

219th District Court, Collin County

Date: October 27, 1986

This was a divorce action involving a couple with a 14 year old daughter. Managing conservatorship of the daughter had been awarded to the father. The mother had been appointed the possessory conservator, with the right of visitation. The couple and their daughter are of Indian descent and have relatives in Sri Lanka. Sometime after the divorce, the father, who remained in Texas, sent the daughter to attend school in Sri Lanka. He stated that the child should attend school in her native land in order to learn more about her heritage and be acquainted with her relatives there. The school is a private diplomatic corps school where English is spoken.

The mother filed a motion requesting that the child be returned to the United States. She contended that the act of sending the child out of the country for school effectively denied her the right to visitation. The father argued that he, as managing conservator, had the right to determine domicile of the child pursuant to the Texas Family Code. Of course, the mother's right to visitation is also guaranteed by the Family Code.

The circumstances of the case presented a direct conflict between the rights of the managing conservator and the rights of the possessory conservator under the Texas Family Code. Had it been necessary for the father to also move, then he would have the right to take the child with him as the custodial parent. The privilege of visitation should be subordinate to the right of the managing conservator to have day to day custody of the child. However, since the removal of the child was such a great distance and since neither parent was with the child, the denial of the mother's visitation rights outweighed the custodial parent's desire for his daughter's international schooling.

The motion was granted to have the child returned to Texas and, at the mother's request, counseling was begun with the mother and daughter in order to facilitate reconciliation of past differences. The reconciliation failed and the child, now 16 years old, was permitted to return to Sri Lanka at the request of both the managing conservator and the child.

The case was significant in that it highlights the careful balancing necessary in cases where the statutory rights of one party may conflict with the co-equal rights of the other.

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214/727-4618

FIFTH CASE

In the Matter of the Marriage of Lou Yvette Applewhite and Michael P. Applewhite, and in the Interest of Joseph Michael Applewhite

No. 219-178-86

219th District Court, Collin County

Date of trial: August 26, 1987 to August 31, 1987

This case went to trial on a Motion to Modify custody of a child filed by the child's father. The parents were divorced in 1977. The mother had been the custodial parent of the child since the divorce. The case was tried to a jury, which answered the required special issues in favor of the mother and against the movant/father. Accordingly, the Motion to Modify was denied.

There is probably no matter more significant than litigation concerning the welfare of a child. The burden of proof placed on the movant in a Motion to Modify is onerous and, in this case, the movant was unable to convince the jury of any of the three findings necessary to prevail. The respondent/mother sought reimbursement for her attorneys fees. This issue was left up to the court by agreement of the parties.

The significance of this type of issue from my point of view is the difficulty in determining whether to award attorney fees and, if so, how much. While justice may be served by compensating the prevailing party, it may not be served by discouraging those who seek relief from our courts. Since I felt the movant's evidence was especially unconvincing, I awarded some portion of her attorneys fees.

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SIXTH CASE

William Griffin, H.E. Ritchey, Patsy Riddle and William Mershawn

V

Texas Educational Foundation, Inc., and William L. Roberts, Director, McKinney Job Corps Center, and Wallace Dockall, Executive Director, Texas Educational Foundation, Inc., and Mary Young, Deputy Director, El Paso Job Corps Center

Civil Action S-81-24-CA (representation: 3/31/81 to 1/82)

U.S. District Court, Eastern District of Texas, Sherman Division---Judge William M. Steger

In this lawsuit, four former employees of the defendant Texas Educational Foundation, Inc. (TEF) sued alleging that they each had a property interest in their jobs and that they were wrongfully discharged from their employment in a manner that failed to comport with procedural due process under the Fifth and Fourteenth Amendments to the U. S. Constitution. The plaintiffs also alleged that they were terminated in retaliation for having exercised their right of free speech under the First Amendment. Finally, they asserted that their reputations were damaged, which infringed upon a liberty interest under the Fourteenth Amendment without according them due process.

In addition to suing directly under the First, Fifth and Fourteenth Amendments, the plaintiffs sued under the civil rights statutes of Title 42 United States Code sections 1983 and 1985. The plaintiffs made no allegations of unlawful discrimination based upon race, color, sex, religion, age, national origin or physical handicap.

Our firm was hired to represent TEF and all other defendants. TEF is a private, nonprofit Texas corporation which operates Job Corps centers in Texas on federal property pursuant to a contract with the U. S. Department of Labor (DOL).

My participation in the case included researching the applicable constitutional, statutory and regulatory provisions touching upon the discretion afforded our client in its employee discharge decisions; examining the contract documents between TEF and DOL with an eye toward any limitations on employee discharge; preparing our answer and other pleadings including a Motion to Dismiss and a memorandum of law in support thereof (a copy of which is attached to this questionnaire under question 26 as an example of legal writings reflecting my personal work); and interviewing witnesses in preparation for trial.

Of particular significance to me was the admirable extent which the court went to in order to afford the plaintiffs every opportunity to present their case. Although I would have preferred to have had the court grant our Motion to Dismiss for Lack of Subject Matter Jurisdiction, that motion was denied. In 1984, two years after I had left the law firm, the case was dismissed on the plaintiffs' own motion. It was my understanding that the plaintiffs were unsuccessful in obtaining the relief for which they had sued.

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SEVENTH CASE

William O. Dewitt, William O. Dewitt, Jr., Joan Margaret Dewitt and Donna Dewitt Perkins

V

LoVaca Gathering Company, a corporation, and Clajon Gas Company, a corporation

Civil Action P-79-19-CA (representation: 5/12/78 to 1/82)

U.S. District Court, Eastern District of Texas, Paris Division---Judge William Wayne Justice

This was an antitrust lawsuit involving allegations of price fixing, or more specifically, collusive bidding. Our firm was hired to represent the plaintiffs, who owned a majority interest in a fairly prolific natural gas well in west Texas. In our complaint, we alleged that our clients had suffered damages as a result of entering into a gas sales contract with one of the defendants that was the product of an anticompetitive agreement between the two defendants. Our contention was that the defendants conspired to submit a fixed bid for the plaintiffs' gas. We maintained that this conspiracy or combination between the two defendants was unlawful under the Sherman and Clayton Antitrust Acts and under the Texas Antitrust Act.

My participation in the case entailed legal research into the applicable antitrust statutes and case law covering the required elements of our proof (copies of two of several interoffice legal memoranda which I prepared are attached to this questionnaire in response to question 26); preparation of the complaint; preparation of discovery motions and responses to discovery requests from the defendants; review of documents produced by the defendants; review of Texas Railroad Commission Annual Reports covering operations of the defendants; examination of gas purchase contracts; examination of court records of lawsuits in other parts of the state involving the same defendants; and meeting with potential witnesses.

The significance of the case to me was the difficulty in determining whether the circumstantial evidence of a conspiracy was strong enough to overcome the defendants' evidence that their actions were taken unilaterally for sound business reasons.

The lawsuit was still pending when I left Boyd, Veigel & Hance for the bench. I understand it was settled approximately one and a half years later.

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EIGHTH CASE

D. C. Smith

v.

United States Veterans Administration

Claim Number C 21 155 679
Board of Veterans Appeals Docket Number 82-15-445
(representation: 1/8/81 to 1/82)
VA Adjudication Panel at VA Regional Office in Waco, Texas:
    W. D. Hogan
    J. Vesely
    Dr. R. E. Ensign

This was a veterans disability case in which I represented an elderly veteran who had been denied "service-connected" disability benefits by the VA in 1964. My client's disability arose out of his hospitalization in a VA hospital in 1959, where he was given a powerful antibiotic. Treatment of my client (Mr. Smith) with this drug at the dosage level administered by the VA doctor resulted in Mr. Smith's deafness and disability.

Medical research revealed that much had been learned since 1959 about the toxicity of the drug given to Mr. Smith. The fact that high dosages caused deafness was somewhat unforeseen in 1959. Legal research disclosed a recent VA General Counsel Opinion issued in 1978, which reinterpreted the term "accident" in the VA regulations pertaining to "service-connected" benefits. "Accident" was reinterpreted to include the unforeseen results of medical treatment. Based upon this and other research, I developed a new argument for Mr. Smith's case.

After researching the substantive law and administrative procedures, I presented Mr. Smith's claim again to the VA under this new argument. The claim was again denied in 1981. This denial was appealed to an administrative tribunal called the Board of Veterans Appeals. In 1982, the Board of Veterans Appeals issued its decision in Mr. Smith's favor and granted his request for "service-connected" benefits. Consequently, his pension increased significantly and he received a lump sum amount for past benefits.

The case took about two years to complete. I was responsible for the entire case, including researching the applicable statutes and VA regulations; filing the claim; filing the appeal; preparing a letter-brief summarizing our argument; and presenting final arguments to the Board of Veterans Appeals through the Waco Regional VA Office.

The broad significance of this case, or more importantly, this type of case, was that there are probably many veterans who have valid "service-connected" disability claims under this reinterpretation of the term "accident". However, they are unable or incapable of presenting and pursuing those claims through the administrative labyrinth. Securing legal counsel to represent them is made very difficult by a federal statute which limits attorneys fees to $10.00. Unlike social security disability cases, the law applicable to veterans disability cases effectively prohibits the payment or receipt of attorneys fees. I was aware of the statute when I accepted the case and, consequently, I was prepared to undertake the matter pro bono.

(Since this case was presented or "tried" before an administrative adjudicatory panel, there were no opposing counsel.)

NINTH CASE

The State of Texas

V

Dorothy M. Matthews

Cause Number 564-76

County Court at Law of Collin County, Texas
Judge Bill Jouette

Date of trial: May 13, 1976

In this criminal matter, I represented the State of Texas as an assistant district attorney for Collin County. The defendant was accused of welfare fraud by knowingly making false statements regarding her employment in order to obtain public assistance from the state in an amount greater than that to which she was entitled. Following a plea of not guilty, the case was tried to the court.

As sole counsel for the state, I was responsible for general trial preparation and trial. The state's case consisted of testimony by state welfare investigators and records from their files pertaining to the defendant. The evidence at trial showed that the state had received anonymous information that the defendant was employed while receiving assistance. However, due to the workload of the investigators, several months passed before this information was verified. In the meantime, the defendant continued to receive the assistance.

The defense was straightforward. The defense attorney argued that there was no fraud since the state had been placed on notice of the defendant's employment and yet continued the welfare checks. My response was that a certain amount of time will always necessarily pass before the fraud can be confirmed and documented through investigation.

Of particular significance was the dilemma faced by the judge in deciding between these two arguments. The issue of guilt in a crime of misrepresentation where the state is aware of the misrepresentation, but nevertheless continues the payments, was resolved in the defendant's favor. She was found not guilty.

opposing counsel:

Mr. George Roland
Attorney at Law
117 South Tennessee
McKinney, Texas 75069
214/542-0266

TENTH CASE

The State of Texas

V

Timothy Joe Wolf

Cause Number 736-76

County Court at Law of Collin County, Texas
Judge Bill Jouette

Dates of Trial: October 13, 1976 to October 15, 1976

In this criminal matter, I represented the State of Texas as an assistant district attorney for Collin County. The defendant was charged with driving while intoxicated. After a plea of not guilty, the case was tried to a jury.

As sole counsel for the state, I was responsible for interviewing witnesses; preparing for trial; selecting the jury; trying the case; and making final argument to the jury. The state's evidence consisted of testimony from police officers, civilian eyewitnesses, a lab technician who analyzed the defendant's blood sample and hospital personnel who drew the blood. The evidence at trial showed that the defendant, after driving erratically, drove off of the highway and into a ditch, injuring himself in the process. He was taken to a local hospital where a blood sample was drawn. The blood sample went through a chain of custody within the responsible police agency and eventually was received by the Department of Public Safety lab for examination. A laboratory analysis of the blood sample revealed the presence of alcohol sufficient to establish a legal presumption of intoxication.

Since the police officers could not recall exactly when or by whom the blood sample was transported to the DPS lab, the defense urged the court to exclude the blood analysis from evidence on the grounds that the results were unreliable. However, the lab technician testified that the tube of blood was received in a sealed condition with the seal unbroken and signed by the arresting officer. The results of the blood test were admitted into evidence and the defendant was found guilty by the jury.

In view of the fact that DWI is a fairly common offense litigated in criminal courts, this case probably had no particular broad significance. Nevertheless, of significance to me was the principle that the purpose of proving up a chain of custody for perishable or easily tampered with evidence is simply to show that the evidence had not been tampered with. Where, as in this case, there is independent proof that the perishable evidence was unaltered when analyzed, the chain of custody showing becomes less important.

opposing counsel:
Honorable John L. McCraw, Jr.
Attorney at Law
BancTexas Bldg.
321 North Central Expressway
McKinney, Texas 75069
214/542-6262

19. **Legal Activities**: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived.)

If measured by the hours I spent and the amount at stake for our clients, the most significant legal activities I pursued during my years in private practice were in connection with the highway project discussed in my answer to question 10 and the antitrust case described fully in my answer to question 18.

However, if measured by the amount of satisfaction I personally obtained and the impact my legal services may have had on the particular client, the pro bono case of D. C. Smith v. U. S. Veterans Administration is among the most significant legal activities I have pursued. As someone who was both uneducated and deaf, Mr. Smith had virtually no means by which to urge his rights under federal law. Since I have already discussed the case at length as the eighth case in my answer to question 18, I will not go into further detail except to say that I found helping Mr. Smith very rewarding.

With respect to other legal matters that did not involve litigation, I found the year I spent as a part-time law school instructor at SMU Law School to be rewarding. Not only did I make a contribution in helping law students with their legal research and writing skills, but I also benefitted personally from teaching the class. Preparing lessons and classroom instruction forced me to articulate the techniques that I was teaching and helped to sharpen my own research and writing abilities.

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients, or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.

   I have no arrangements to be compensated in the future for any financial or business interest or to receive future benefits from any previous business relationships.

2. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.

   Should I have a conflict of interest in connection with a case before me, I would recuse myself from that case. If I see that the conflict applies to a large class of cases pending on my docket, I would divest myself of whatever interest is creating the conflict.
   I do not know of any catagories of litigation or financial arrangements that are likely to present potential conflicts of interest for me.

3. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

   I have no such plans, commitments or agreements.

4. List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding $500 or more. (If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.)

1987:	State of Texas (salary)	$56135
	Collin County (salary supplement)	$18275
	Children's Discovery Center (wife's salary)	$ 2008
	Plano Bank & Trust (interest)	$ 809
	Plano Bank & Trust (dividends)	$ 782
	Exxon Corporation (dividends)	$ 760
	Amoco Corporation (dividends)	$ 468
	General Motors Corporation (dividends)	$ 20

1988: The sources and amounts of income anticipated during the current calendar year are approximately the same, except for the Exxon stock which was sold in 1987.

5. Please complete the attached financial net worth statement in detail (add schedules as called for).

   Please see the attached financial net worth statement.

6. Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

   The only role I have ever played in a political campaign was as a candidate in my own campaigns for judicial office. I ran unopposed in both 1982 and 1986 for judicial office.

Richard A. Schell
4-17-88

FINANCIAL STATEMENT

NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS			
Cash on hand and in banks	28000		
U.S. Government securities—add schedule	none		
Listed securities—add schedule	11222		
Unlisted securities—add schedule	30925		
Accounts and notes receivable:			
Due from relatives and friends	none		
Due from others	none		
Doubtful	none		
Real estate owned—add schedule	153854		
Real estate mortgages receivable	none		
Autos and other personal property	70000		
Cash value—life insurance	none		
Other assets—itemize:			
Judicial Retirement Accounts	30000		
Total assets	324001		

LIABILITIES			
Notes payable to banks—secured	none		
Notes payable to banks—unsecured	none		
Notes payable to relatives	none		
Notes payable to others	none		
Accounts and bills due	none		
Unpaid income tax	none		
Other unpaid tax and interest	none		
Real estate mortgages payable—add schedule	none		
Chattel mortgages and other liens payable	none		
Other debts—itemize:	none		
Total liabilities	none		
Net worth	324001		
Total liabilities and net worth	324001		

CONTINGENT LIABILITIES			
As endorser, comaker or guarantor	none		
On leases or contracts	none		
Legal Claims	none		
Provision for Federal Income Tax	none		
Other special debt	none		

GENERAL INFORMATION			
Are any assets pledged? (Add schedule.)	no		
Are you defendant in any suits or legal actions?	no		
Have you ever taken bankruptcy?	no		

SCHEDULE 1 – STOCKS AND BONDS

NUMBER OF SHARES	NAME OF ISSUER	WHERE TRADED	MARKET PER SHARE	TOTAL VALUE	PLEDGED? YES OR NO	RESTRICTED* YES OR NO	REGISTERED IN NAME OF
142	Amoco Corporation	NYSE	$77	10934	no	no	Janice Schell
4	General Motors Corporation	NYSE	$72	288	no	no	Janice Schell
208	Plano Bank & Trust		$25	5200	no	no	Janice Schell
1029	Plano Bank & Trust		$25	25725	no	no	Richard Schell

* RESTRICTED SECURITIES MEANING RESTRICTIONS IMPOSED BY LETTER, LEGEND, OR CONTROL.

SCHEDULE 2 – NOTES AND ACCOUNTS RECEIVABLE (INCLUDING REAL ESTATE)

MAKER	ORIGINAL AMOUNT	PRESENT BALANCE	PAYMENTS	MATURITY	COLLATERAL IF ANY
none					

NOTE: IF PRIOR LIENS EXIST ON ANY REAL ESTATE NOTES LISTED ABOVE, PLEASE INDICATE LIEN HOLDER AND AMOUNT ON PAGE 4.

SCHEDULE 3 – LIFE INSURANCE

COMPANY	FACE AMOUNT	CASH SURRENDER OR LOAN VALUE	POLICY LOAN (IF ANY)	BENEFICIARY
none with cash value				

SCHEDULE 4 – NOTES AND ACCOUNTS PAYABLE

DUE TO	ORIGINAL AMOUNT	PRESENT BALANCE	PAYMENTS	MATURITY	COLLATERAL, IF ANY
none					

SCHEDULE 5 – REAL ESTATE OWNED

ITEM NO.	LOCATION, SIZE AND IMPROVEMENTS	MARKET VALUE	* TYPE APPRAISAL	COST	YEAR ACQUIRED	MONTHLY INCOME	RELATED INDEBTEDNESS			
							MONTHLY PAYMENT	LIEN HOLDER	ORIGINAL AMOUNT	PRESENT BALANCE
1	residential lot in Hills									
2	of Indian Creek subdivi-									
3	sion in Plano, Texas	110000	S	110000	1987	none	none	none		
4										
5										
6										
7										
	CARRY TOTALS TO PAGE 1.									
	HOMESTEAD									
8										
	UNDIVIDED INTERESTS IN REAL ESTATE (YOUR % ONLY - INDICATE % OWNERSHIP IN DESCRIPTION)									
9	33% of two adjoining lots									
10	located in Plano, Texas	12187	S	12187	1984	none	none	none		
11	(brother & sister ow 67%)	16667	S	16667	1986	none	none	none		
12	2% of 95 acres in Ellis									
13	County, Texas (Ovilla Rd)	15000	S	15000	1985	none	none	none		
	YOUR % OF MARKET VALUE AND DEBT (TO PAGE 1)	43854								

NOTE: THE LEGAL AND EQUITABLE TITLE TO ALL THE REAL ESTATE LISTED ABOVE IS SOLELY IN MY NAME EXCEPT AS FOLLOWS (LIST ITEM NO. AND LEGAL OWNER):
The Indian Creek lot is in the name of Richard A. and Janice S. Schell.

IF YOUR LIABILITY EXCEEDS YOUR OWNERSHIP %, PLEASE INDICATE AMOUNT IN CONTINGENT LIABILITY SECTION ON PAGE 1.
* PLEASE INDICATE MARKET VALUE SOURCE: MAI (M); SELF (S) – IF SELF, LIST COMPARABLES IF AVAILABLE ON PAGE 4.

SCHEDULE 6 – OIL INTERESTS (SHOW IN OTHER ASSETS)

LOCATION AND DESCRIPTION	FRACTIONAL INTEREST	MONTHLY INCOME	PRESENT VALUATION	VALUATION BY WHOM
none				

OTHER CREDIT REFERENCES
(DO NOT INCLUDE ANY LISTED ON SCHEDULE 4)

NAME	HIGH CREDIT	DATE PAID	SECURED OR UNSECURED

GENERAL INFORMATION

ARE YOU A PARTNER OR OFFICER IN ANY OTHER VENTURE?	______
ARE YOU A DEFENDANT IN ANY SUIT OR LEGAL ACTION?	______
ARE YOU PRESENTLY SEPARATED FROM SPOUSE OR INVOLVED IN DIVORCE PROCEEDINGS?	______
HAVE YOU EVER TAKEN BANKRUPTCY?	______
ARE ANY OF THE ASSETS INCLUDED ON THIS STATEMENT THE SEPARATE PROPERTY OF YOUR SPOUSE?	______

IF THE ANSWER TO ANY OF THE ABOVE QUESTIONS IS YES, PLEASE EXPLAIN ON PAGE 4.

III. GENERAL (PUBLIC)

1. An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

During the five years that I was in private law practice, from 1977 through 1981, I did participate in serving the disadvantaged by offering legal services at no charge or reduced rates. However, because it has been anywhere from six to eleven years since I was in private practice, it is difficult for me to recall particular cases. Our firm did not keep separate records of pro bono work and I did not keep a log or diary myself to separately document just those cases handled at reduced rates or no charge. Without some independent recollection of the file numbers or of names, I can recall only a few specific instances, which I was able to then verify through the records at my former law firm. What follows are the specific instances that I can recall.

(i) My largest and most time-consuming pro bono case was the case of D. C. Smith v. U. S. Veterans Administration. I have discussed this case in detail as the eighth case in my answer to question 18 in Part I of this questionnaire. At the time I accepted Mr. Smith's case, he was receiving a small veteran's pension of just over $200 per month. I felt he had a compelling argument that his disability was "service-connected" and that he was entitled to a more generous pension based on service-connection. I was aware that federal law prohibited the payment or receipt of attorneys fees in this type of case. Moreover, my client could not afford to pay hourly attorneys fees notwithstanding the federal statute. I accepted the case at no charge. The case took approximately two years from the time I opened the file until a final decision was received from the Board of Veterans Appeals. Law firm records show that I recorded 34 hours of time in this case. However, since there was no monetary incentive to dictate all time spent, I would estimate my total time devoted to this case at twice that, or about 70 hours. This estimate is based on my review of the file and my recollection of the amount of work involved in research, preparing the claim, preparing the appeal and letter-brief, presenting final arguments and counseling with my client.

(ii) I recall drafting several wills at reduced charge or no charge for clients who were on tight budgets. One case that I specifically remember was a will prepared for a young man named Kelly Hathaway who was blind. He had employed two other lawyers in our firm for some tax advice and I prepared a will for him at no charge. I spent 4.3 hours on the matter.

(iii) Another case which I handled at no charge was a divorce for a woman named Dorothy Zahniser. She did not have the funds to pay a lawyer, but needed a divorce and division of what personal property she and her husband had. This was before the North Texas Legal Services agency was in existence. I charged her only the filing fee and I spent between 15 and 20 hours on the case.

As a young lawyer with a family to support, I was not able to devote too much time to the delivery of free legal services. However, I found it rewarding when I did.

2. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex or religion. Do you currently belong, or have you belonged, to any organization which discriminates -- through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What you have done to try to change these policies?

   I am a past member of the Plano Rotary Club of Plano, Texas. I was a member from the fall of 1982 until the spring of 1986, and I served one year on the club's board of directors. Under the Rotary International constitution, membership is open only to men, although women may attend meetings, speak at meetings and receive awards from Rotary. While I did not try to change Rotary's membership policies, I do not recall any women ever applying for membership during my service on the board of directors. I resigned from Rotary because of my uncertain schedule and the difficulty I had in regularly attending the meetings. I found Rotary to be an extremely worthwhile organization that engages in community service projects and encourages high ethical standards in all businesses and professions. Personally, I hope that Rotary will, in the future, relax its membership policies and admit women. I believe that such a change would broaden and strengthen the organization and increase participation in community service projects.

3. Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, did it recommend your nomination? Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and interviews in which you participated).

   There is a selection commission, composed of 18 lawyers from all four federal judicial districts in Texas, which screens applicants for judgeships in the federal courts in

Texas. This bipartisan "Federal Judiciary Evaluation Committee" was organized by Senator Phil Gramm and is charged with the responsibility of evaluating the qualifications of those who apply through Senator Gramm's office. It is my understanding that this evaluation committee did recommend my name to Senator Gramm as a candidate for nomination.

My experience in the judicial selection process began at the end of August 1987, when I learned of the vacancy in the U.S. District Court for the Eastern District of Texas and wrote to Senator Gramm to express my interest in the position. I received from Senator Gramm a rather comprehensive Personal Data Questionnaire, similar to the ABA questionnaire, which was to be used by the Senator and his evaluation committee. At the end of September 1987, I returned the completed questionnaire. I was then instructed to appear for an interview with the evaluation committee on November 7, 1987 in Houston. Most of the 18 members of the committee were present and my interview lasted approximately one hour.

I Interviewed with Senator Gramm on November 16th in his office in Washington, D. C. On December 18, 1987, I received a phone call from Senator Gramm wherein he informed me that he was forwarding my name to President Reagan for nomination.

On January 12, 1988, I was back in Washington for a series of interviews at the Department of Justice with several Assistant Attorney's General. These interviews lasted approximately four hours. Following the interviews, I received the FBI background questionnaire and the ABA Personal Data Questionnaire from the Justice Department. I completed the FBI form first and was interviewed by two special agents in Dallas on February 11, 1988. On February 22nd, I sent my completed Personal Data Questionnaire back to the Justice Department and to the Chairman and Fifth Circuit representative for the ABA Standing Committee on the Federal Judiciary.

In March, I received from and returned to the Justice Department a "Physician's Statement" and a "Financial Disclosure and Conflict of Interest Questionnaire". On March 24, 1988, the ABA Fifth Circuit representative interviewed me in my office as the last step in his investigation of me for the ABA committee. On April 13, 1988, I received notification of my formal nomination by the President.

My interviews with the evaluation committee, Senator Gramm, the Justice Department and the ABA representative involved questions and discussions relating to professional competence, integrity, judicial temperament and industry. The FBI interview dealt almost exclusively with my personal background, past employment, residences, memberships and so forth.

I have found the entire nomination process to be lengthy and thorough, as it should be for a lifetime appointment.

4. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonable be interpreted as seeking any express or implied assurances concerning your position on such case, issue, or question? If so, please explain fully.

No assurances or commitments were sought or requested.

5. Please discuss your views on the following criticism involving "judicial activism."

The role of the Federal judiciary within the Federal government, and within society generally, has become the subject of increasing controversy in recent years. It has become the target of both popular and academic criticism that alleges that the judicial branch has usurped many of the prerogatives of other branches and levels of government.

Some of the characteristics of this "judicial activism" have been said to include:

a. A tendency by the judiciary toward problem-solution rather than grievance-resolution:

Article III of the Constitution limits the judicial power of the federal courts to the consideration of "cases" and "controversies" that are properly brought before them. Therefore, it is only in the context of a "case" or "controversy" that courts may engage in the adjudication of disputes or may exercise judicial review over government action. This judicial power granted to the courts flows from the necessity to decide a case or controversy. The judicial branch has no constitutional authority to intervene beyond that necessity. Consequently, judges should be mindful of this inherent constitutional limitation on their power. The adjudication of a case should be confined to resolving the dispute that is legitmately before the court in the lawsuit at hand.

Assuming that the term "problem-solution" is somewhat broader than "grievance-resolution", the validity of the criticism that the judiciary tends toward the former rather than the latter depends upon the breadth of the particular case or controversy. The difference between the two terms can also be a matter of semantics. Lawsuits vary in the extent to which judicial intervention is necessary to resolve the controversy.

Whatever issues are presented, the court's orders should be confined to the resolution of only the genuine controversy before the court.

But, while judges should not engage in problem-solving separate and apart from resolving the dispute presented, neither should they shrink from that duty of dispute-resolution. The essential point is that the judge, whose power is limited by the Constitution, should not undertake to adjudicate more than the issues presented and more than is necessary to resolve the controversy before the court.

b. A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;

c. A tendency by the judiciary to impose broad, affirmative duties upon governments and society;

If the terminology "to employ the individual plaintiff as a vehicle" suggests an effort by the judge to use the plaintiff as a pretext to extend the court's power beyond the controversy presented by the plaintiff's case, then I agree that this would be improper. Under the Constitution, the judge's power only extends to the "case" or "controversy" tendered by the litigants and for which there is a cause of action. Judges should resist the temptation to extend their orders beyond those litigants and beyond the genuine controversy presented by them. To do otherwise would not only violate the Constitution's limitation on the judicial power, but would also result in a loss of the judge's impartiality.

At the same time, the validity of this criticism, and of the others contained in this question, depends upon the circumstances of the particular case. The resolution of some lawsuits may unavoidably and necessarily extend beyond the individual plaintiff. For example, lawsuits brought by prisoners or patients at government-run institutions may, of necessity, impact a broader group of individuals. Where the institution is found to be out of constitutional compliance in some manner, whatever remedial action is taken by the court will invariably affect the other prisoners or patients.

Again, however, the judge should not intervene more than is necessary to determine the rights of the parties and resolve the controversy. In order to remain faithful to the principle of the separation of powers, the judge's orders should sweep no broader than that which is required to fairly and finally adjudicate the issues before the court.

d. A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness;

The criticism posed here suggests a tendency by judges to disregard these threshold requirements of justiciability. Since the concepts of standing and ripeness are jurisdictional, judges should respect the boundaries of these principles. This does not mean that standing should be granted grudgingly, but that judges should insist that the litigants satisfy the tests set forth by the Supreme Court.

The Supreme Court has said that the question of standing in the federal courts is to be considered in the framework of Article III which restricts judicial power to "cases" and "controversies". More particularly, Article III requires that the dispute sought to be adjudicated will be presented in an adversary context. That is, the plaintiff must have a stake in the outcome of the suit, which provides concrete adverseness and sharpens the presentation of issues. Otherwise, there is no true "controversy".

Apart from the "case" or "controversy" test, the plaintiff must show that he has suffered some injury in fact and that the interest the plaintiff seeks to protect is arguably within the zone of interests to be protected or regulated by the statute or constitutional guarantee in question. The Supreme Court has further stated that the plaintiff's interest does not have to be economic. The interest may be "aesthetic, conservational or recreational" or perhaps "spiritual" in the case of the First Amendment. These more nebulous interests, upon which standing may be based, have perhaps opened the door to criticism that the federal courts have loosened this jurisdictional requirement. Whether this has actually occurred can only be answered after a case by case analysis.

As with-standing, the concept of ripeness limits the permissible reach of the courts. The judge should, accordingly, show deference to this element of justiciability by insuring that the disagreement has ripened into a true "case" or "controversy" before granting jurisdiction.

e. A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.

Presumably, this criticism is directed toward the actions taken by some federal courts in the area of institutional reform litigation. The operation of schools, prisons, state hospitals and other institutions is, and should be, a function of the executive branch. The constitutional principle of the separation of powers is at least blurred by the intrusion of the judicial branch into an area traditionally within the executive branch. Moreover, the question of whether the courts have the capacity and expertise to intervene in the management of these institutions is certainly debatable.

On the other hand, it is my feeling that federal judges have an obligation and a duty to act where such an institution is being operated in a manner that violates the Constitution. There may be disagreements over whether the violation is real or perceived. But, if the violation is real, the judge has an obligation to intervene.

The criticism posed by subpart (e) is really a criticism of the type of relief employed by the court, namely, mandatory or superintending injunctions. Court administration and oversight of a custodial institution can run afoul of the constitutional separation of powers principle. Ordinarily, the court should identify the particular practices within the institution which are found to offend constitutional rights and then defer to the judgment of executive officials to correct the violations. This avoids a separation of powers problem. Furthermore, it avoids the practical problem of the lack of judicial expertise and resources needed to engage in the time-consuming job of managing complex custodial institutions.

While this lack of expertise is not necessarily a reason to avoid a full resolution of the controversy, it is certainly a legitimate consideration in determining the appropriate breadth and detail of the court's orders. If, after describing how the institution is out of constitutional compliance, the executive branch is recalcitrant and takes no remedial action, then perhaps the court has no alternative but to impose a superintending injunction upon the institution as a last resort.

AFFIDAVIT

I, Richard Schell, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

April 24, 1988
(DATE)

Richard Schell
(NAME)

(NOTARY)

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Standing Committee on Federal Judiciary
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2005 Gird Road
Fallbrook, CA 92028
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1800 M Street, NW
Washington, DC 20036
(202) 331-2210
ABA/NET: ABA 461

April 19, 1988

CONFIDENTIAL

The Honorable Joseph R. Biden, Jr.
Chairman, United States Senate
Committee on the Judiciary
Washington, D.C. 20510

Re: RICHARD A. SCHELL
United States District Court
for the Eastern District of Texas

Dear Senator Biden:

Thank you for affording this Committee an opportunity to express an opinion pertaining to the nomination of Richard A. Schell for appointment as Judge of the United States District Court for the Eastern District of Texas.

Our Committee is of the unanimous opinion that Judge Schell is "Qualified" for this appointment.

Sincerely yours,

Harold R. Tyler, Jr.
Chairman

cc: All Committee Members

WILLIAM G. CAMBRIDGE

Birth:	December 13, 1931	Atlantic, Iowa
Legal Residence:	Nebraska	
Marital Status:	Married	Jean Clair Burford Cambridge 2 children
Education:	1949 - 1950	University of Omaha
	1950 - 1955	University of Nebraska B.S. degree J.D. degree
Bar:	1955	Nebraska
Military Service:	1955 - 1957	United States Army First Lieutenant
Experience:	1957 - 1959	Madgett and Hunter Associate
	1960 - 1963	Madgett, Hunter & Cambridge Partner
	1964 - 1981	Sole practitioner Hastings, Nebraska
	1981 - present	Judge, Tenth Judicial District State of Nebraska
Office:	Adams County Courthouse Hastings, Nebraska 68901 402 461-7264	
Home:	711 North Shore Drive Hastings, Nebraska 68901	

To be United States District Judge for the District of Nebraska

QUESTIONNAIRE
FOR
JUDICIAL NOMINEES

WILLIAM G. CAMBRIDGE

QUESTIONNAIRE FOR JUDICIAL NOMINEES

I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. Full name (include any former names used.)

William George Cambridge, a/k/a
William G. Cambridge,
W.G. Cambridge,
Bill Cambridge

2. Address: List current place of residence and office address(es).

Residence	Office
711 North Shore Drive	Adams County Courthouse
Hastings, Nebraska 68901	Hastings, Nebraska 68901

3. Date and place of birth.

December 13th, 1931 Atlantic, Iowa

4. Marital Status (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).

Married Jean Claire Burford Cambridge on August 12th, 1953, in Omaha, Nebraska; housewife.

5. Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.

University of Omaha, Omaha, Nebraska, from 1949 to 1950.

University of Nebraska, Lincoln, Nebraska, from 1950 to 1955; Bachelor of Science - 1953 and Juris Doctorate - 1955.

6. Employment Record: List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including firms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.

October, 1957 to December, 1959 -- Associate employed by the law partnership of Madgett and Hunter, Hastings, Nebraska.

January, 1960 to December, 1963 -- Partner in the law firm of Madgett, Hunter and Cambridge, Hastings, Nebraska.

January, 1964 through September, 1981 -- Practice as a sole proprietor at Hastings, Nebraska.

7. Military Service: Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.

Yes. Active duty: September, 1955, to September, 1957. Inactive Reserve: 1957 to 1965.
Army First Lieutenant 040 57 862 Honorably discharged.

8. Honors and Awards: List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.

None.

9. Bar Associations: List all bar associations, legal or judicial-related committees or conferences of which you are or have been a member and give the titles and dates of any offices which you have held in such groups.

Name and Address	From	To	Office Held
American Bar Association Chicago, Illinois	1958	Present	
Nebraska Bar Association Lincoln, Nebraska	1955	Present	
10th Judicial District Bar Assn.; Hastings, Nebraska	1957	Present	
Adams County Bar Association Hastings, Nebraska	1957	Present	Secretary & President in 1960's

10. Other Memberships: List all organizations to which you belong that are active in lobbying before public bodies. Please list all other organizations to which you belong.

The only organizations to which I belong that are active in lobbying before public bodies are the American Bar and Nebraska Bar Associations and the American Association of Retired Persons.

The other organizations to which I belong are as follows:
Hastings College, Hastings, Nebraska, Honorary Trustee
Mid-West Lodge No. 317, A.F. & A.M., Hastings, Nebraska
Valley of Orient, Mother Scottish Rite of Freemasonry, S.J., Hastings, Nebraska
Tehama Temple A.A.O.N.M.S., Hastings, Nebraska
Royal Order of Jesters, Hastings, Nebraska
Lochland Country Club, Hastings, Nebraska
University of Nebraska Touchdown Club, Lincoln, Nebraska
Phi Kappa Psi, Lincoln, Nebraska
Phi Delta Phi, International Legal Fraternity, Lincoln, Nebraska
First Presbyterian Church, Hastings, Nebraska

11. Court Admission: List all courts in which you have been admitted to practice, with dates of admission and lapses if any such memberships lapsed. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.

The Courts of Nebraska June 22, 1955.
United States District Court for the District of Nebraska June 22, 1955.

12. Published Writings: list the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional low or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.

None, other than the opinions written by me while sitting, by designation, as a temporary member of the Supreme Court of the State of Nebraska; copies of those opinions are set forth below under Tab A.

13. Health: What is the present state of your health? List the date of your last physical examination.

Excellent March 8th, 1988

14. Judicial Office: State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

I now hold the judicial office of District Judge for the Tenth Judicial District, State of Nebraska. I was appointed to that office effective October 2, 1981, by the then Governor of the State from a list of candidates submitted to him by the Judicial Nominating Commission. I ran for retention of the office on the ballot in 1984 and was retained. I held no judicial offices previous to this one. The District Court in Nebraska is the middle court in a three tier court system and has general, original and appellate jurisdiction in all matters, both civil and criminal, except where otherwise provided. The Supreme Court of the State of Nebraska has appellate and final jurisdiction of all matters of appeal and proceedings in error which may be taken from the judgments or decrees of the District Courts. The County Courts in the State of Nebraska have exclusive original jurisdiction of all matters relating to decedents estates including the probate of Wills and the construction thereof, all matters relating to guardianship or conservatorship of any person, any action based on violation of a City or Village Ordinance, all juvenile matters except in counties which have established a separate juvenile court, and in all matters of adoption. There are approximately 160 different appeals to the District Court provided by statute.

15. Citations: If you are or have been a judge, provide: (1) citations for the ten most significant opinions you have written; (2) a short summary of and citations for all appellate opinions where your decisions were reversed or where you judgment was affirmed with significant criticism of your substantive or procedural rulings; and (3) citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, please provide copies of the opinions.

Copies of the opinions or descriptions thereof are attached under Tab B, below.

16. Public Office: State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.

None.

17. Legal Career:

a. Describe chronologically your law practice and experience after graduation from law school including:

1. whether you served as clerk to a judge, and if so, the name of the judge, the court, and the dates of the period you were a clerk;

I did not so serve.

2. whether you practiced alone, and if so, the addresses and dates;

I practiced alone at Hastings, Nebraska, from January 1, 1964, through October 1, 1981.

3. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each;

October, 1957, to December, 1959 -- Associate employed by the law partnership of Madgett and Hunter, Hastings, Nebraska, engaged in the general practice of law.

January, 1960, to December, 1963 -- Partner in the law firm of Madgett, Hunter & Cambridge, Hastings, Nebraska, engaged in the general practice of law.

b. 1. What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?

1957-1959 -- fact gathering, research and second chairing.

1960-1964 -- in addition to the above, criminal, bankruptcy, workman's compensation and family law and collections.

1964-1981 -- general practice of law including corporate law, estate planning and probate, real estate law, family law, and trial and regulatory commission work.

2. Describe your typical former clients, and mention the areas, if any, in which you have specialized.

Individual persons in the City of Hastings, Nebraska, and the surrounding area and corporations and institutions such as banks, a savings and loan association, school districts, a college, a hospital trust, a telephone company, a car dealership, a modular home manufacturer, farming and livestock operations, farm product manufacturers, farm storage elevators, et cetera. I did not specialize in any area.

c. 1. Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates.

In the context of one specializing in the practice of law as a trial attorney, my appearance in court would have to be considered occasional. However, in the context of one engaged in the general practice of law where and when I was, my court appearances could be considered frequent or regular. Attorneys appear more often in court today than they did during most of the years of my practice, and especially is this true with regard to the early and middle years of my practice. As a District Judge for the State of Nebraska for the past six and a half years, my appearances are and have been, of course, on a daily basis.

2. What percentage of these appearances was in:
    (a) federal courts 1%
    (b) state courts of record 99%
    (c) other courts

3. What percentage of your litigation was:
    (a) civil 90%
    (b) criminal 10%

4. State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

Approximately thirty (30) -- sole counsel

5. What percentage of these trials was:
    (a) jury 10%
    (b) non-jury 90%

18. Litigation: Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

(a) The date or representation;
(b) the name of the court and the name of the judge or judges before whom the case was litigated; and
(c) the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the parties.

The cases are described under Tab C, below.

19. Legal Activities: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived.

The most significant legal activities I pursued as an attorney were those rendered over a 24 year period in assisting people with their day to day legal problems which were both presented and solved in myriad ways. That involved studying and explaining the law for them, advising them how to comply with the law, preparing instruments, documents and pleadings for them, and endeavoring to keep them out of litigation, but going to court for and with them when necessary. As a Judge for the past six and one-half years, the most significant legal activities I have pursued have been the administration of justice in accordance with the law and with fairness, impartiality and integrity.

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients, or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.

   None other than the pension benefits provided under the laws of the State of Nebraska for a State Judge upon retirement.

2. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.

   I do not foresee or envision any conflicts of interest whatsoever. If a conflict did arise I would attempt to divest myself of the interest causing the same, and if that were not possible, I would disqualify myself in the case.

3. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

   No.

4. List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding $500 or more (If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.)

   The report is set out under Tab D, below.

5. Please complete the attached financial net worth statement in detail (Add schedules as called for).

   The completed financial net worth statement is set forth under Tab E, below.

6. Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

   No.

III. GENERAL (PUBLIC)

1. An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

   Whenever requested by the Court to do so, I represented indigents in criminal, juvenile and other matters with little, if any compensation. The case of State vs. Prokop, described under Tab C, below, was one such case; I devoted approximately 200 hours of my time to that case. There were a number of such cases, not all, of course, involving that much time. I do not believe I ever refused my services to any person because of his or her inability to pay for them.

2. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion. DO you currently belong, or have you belonged, to any organization which discriminates -- through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership, what you have done to try to changes these policies.

   I do not belong and have not belonged to any organization that practices invidious discrimination. I am, however, a member of the Masons which has no women members.

3. Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, did it recommend your nomination? Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and interviews in which you participated).

   All applicants for the position were required to submit applications to a screening committee of Nebraska Attorneys appointed by Senator David Karnes of Nebraska. Those applications were then reviewed by that committee and by Senator Karnes. Several of the applicants, including myself, were then interviewed

by Senator Karnes and subsequently, upon his recommendation, by the Justice Department. Following that, I was recommended by the Senator for nomination, and after Federal Bureau of Investigation and American Bar Association investigations, I was nominated for the position by the President of the United States.

4. **Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as seeking any express or implied assurances concerning your position on such case, issue, or question? If so, please explain fully.**

No.

5. Please discuss your views on the following criticism involving "judicial activism."

The role of the Federal judiciary within the Federal government, and within society generally, has become the subject of increasing controversy in recent years. It has become the target of both popular and academic criticism that alleges that the judicial branch has usurped many of the prerogatives of other branches and levels of government.

Some of the characteristics of this "judicial activism" have been said to include:

a. A tendency by the judiciary toward problem-solution rather than grievance-resolution;

b. A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;

c. A tendency by the judiciary to impose broad, affirmative duties upon governments and society;

d. A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and

e. A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.

I believe that it is the duty of a trial judge to first determine whether there is jurisdiction to hear a case and if there is, to find (or assist the jury in finding) the facts in the case, to ascertain the law which governs in the case, and then to apply (or assist the jury in applying) that law to those facts fairly, impartially and honestly with appropriate explanation. It is the duty of an appellate judge to first determine whether there is jurisdiction to review the decision of the lower tribunal and if there is, to next determine the standard of review in the case, and then to apply fairly, impartially and honestly that standard of review to the facts and the law in the case articulating the reasons for the affirmance, reversal, modification or remand.

I believe that it is the province of the legislative branch of government to make the law, the function of the administrative branch of government to execute it, and the duty of the courts to enforce it.

AFFIDAVIT

I, William G. Cambridge, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

April 15, 1988
(Date)

William G. Cambridge

GENERAL NOTARY
STATE OF NEBRASKA
Robert G. Knight
Comm. Exp. 2-10-92

Robert G. Knight
(Notary)

AO-10
Rev. 8/87

FINANCIAL DISCLOSURE REPORT

Annual Report Due by May 15 from Judicial Officers and certain Judicial Employees (28 USCA App. I, §§ 301-09)

Person Reporting (Last name, first, middle initial) Cambridge, William G.	Court or Organization United States District Court For the District of Nebraska	Date of Report April 14, 1988
Title Nominee for the office of United States District Judge	Date of Entry/Nomination/Termination (only if initial or final report) April 14, 1988	Reporting Period (Calendar year, or inclusive dates) January 1, 1987, through March 31, 1988, inclusive
Home or office address 711 North Shore Drive, Hastings, Nebraska 68901		

IMPORTANT NOTES: *Please read the instructions accompanying this form. The report should include information pertaining to your spouse and dependent children, if any. Attach additional sheets if needed, identifying each attachment by showing your name, the date of the report, and the section(s) being completed.* **Complete all sections, checking the NONE box for each section where you have no reportable information.** *Compare and reconcile this report with last year's and list items in the same order as last year. Type or print clearly. Sign on last page.*

I. POSITIONS. *(Reporting individual only; see pp. 15-16 of Instructions.)*

☐ NONE (No reportable positions)

POSITION	NAME OF ORGANIZATION/ENTITY
Co-Trustee	W.G. Cambridge Amended and Restated Profit Sharing Plan and Trust
Partner	Kerr-Cambridge, A Nebraska Partnership
Director, Vice-President and Treasurer	K-C, Inc., A Nebraska Corporation

II. AGREEMENTS. *(Reporting individual only; see p. 17 of Instructions.)*

DATE	PARTIES AND TERMS

☒ NONE (No reportable agreements)

III. NON-INVESTMENT INCOME. *(Partial disclosure for spouse; see pp. 18-20 of Instructions.)*

☐ NONE (No reportable non-investment income)

	DATE (Honoraria only)	SOURCE AND TYPE	GROSS INCOME (yours, not spouse's)
1		State of Nebraska -- compensation for services	$71,440.76
2		rendered as a District Judge	$
3			$
4			$
5			$

FINANCIAL DISCLOSURE REPORT (cont'd)

Name of Person Reporting: Cambridge, William G.

Date of Report: April 14, 1988

IV. REIMBURSEMENTS and GIFTS--transportation, lodging, food, entertainment.

(Includes those to spouse and dependent children; see pp. 20-22 of Instructions.)

☒ **NONE** (No such reportable reimbursements or gifts)

	SOURCE	DESCRIPTION
1		
2		
3		
4		
5		
6		
7		
8		

V. OTHER GIFTS.

(Includes those to spouse and dependent children; see pp. 20-22 of Instructions.)

☒ **NONE** (No such reportable gifts)

	SOURCE	DESCRIPTION	VALUE
1			$
2			$
3			$
4			$

VI. LIABILITIES.

(Includes those of spouse and dependent children; see pp. 22-24 of Instructions.)

☐ **NONE** (No reportable liabilities)

	CREDITOR	DESCRIPTION	VALUE CODE*
1	New York Life Insurance Co.	Loan on life insurance policy	M
2			
3			
4			
5			
6			
7			

* VALUE CODES: J=$0 to $1,000; K=$1,001 to $5,000; L=$5,001 to $15,000; M=$15,001 to $50,000; N=$50,001 to $100,000; O=$100,001 to $250,000; P=over $250,000

FINANCIAL DISCLOSURE REPORT (cont'd)

Name of Person Reporting	Date of Report
Cambridge, William G.	April 14, 1988

VII. INVESTMENTS and TRUSTS--income, value, transactions. *(Includes those of spouse; partial disclosure for dependent children; see pp. 24-35 of Instructions.)*

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure.	B. Income during period		C. Gross value at end of period		D. Transactions during period (Reporting individual and spouse)				
	Amt. Code[1] (A-H)	Type (e.g., div.)	Value Code[2] (J-P)	Value Method Code[3] (Q-W)	Type (e.g., sold)	If not exempt from disclosure: Date: Month-Day	Value Code[2] (J-P)	Gain Code[1] (A-H)	Identity of buyer/seller (if private transaction)
☐ **NONE** (No reportable income, assets, or transactions)									
Savings acct. American Charter Hastings, Nebraska (JT)	C	Int.							
Certificate American Charter Hastings, Nebraska (JT)	E	Int.	N	T					
Autos and other personal property (JT)			M	W					
Checking acct. City National Bank, Hastings, Nebraska (JT)	B	Int.	L	T					
Checking acct. City National Bank, Hastings, Nebraska (JT)	B	Int.	L	T					
Certificate, Home Federal Hastings, Nebraska (JT)	C	Int.							
Certificate, Home Federal Hastings, Nebraska (JT)	E	Int.							
Certificate, Home Federal Hastings, Nebraska (JT)	A	Int.	N	T					
Residence--711 North Shore Dr Hastings, Nebraska (JT)			O	W					
10 0 Shares Highland Realty Hastings, Nebraska (JT)	A		J	W					
11 1085 Shares International Sensors, Aurora, Nebraska (JT)	A		K	W					
12 IRA--Equitable Life Assurance--ABA	B	Int.	L	T					
13 20 Shares K-C, Inc. Hastings, Nebraska	A		J	W					
14 20% of Kerr-Cambridge, Nebr. Partnership, Hastings, NE	D	Prtnshp Dist.	L	W					
15 20 acres undeveloped land Carter County, Missouri (JT)	A		K	W					
16 Nebraska Judges Retirement Lincoln, Nebraska	D	Int.	M	T					
Cash value--New York Life Policy			M	T					
18 5 Ltd. Partnership Units Search-1979 (JT)	A		J	W					
19 5 Ltd. Partnership Units Search-1981 (JT)	A		J	W					
Cash value--TransAmerica Occidental Life Policy			K	T					

1 Income/Gain Codes:	A = exempt ($0 to $100) E = $5,001 to $15,000	B = $101 to $1,000 F = $15,001 to $50,000	C = $1,001 to $2,500 G = $50,001 to $100,000	D = $2,501 to $5,000 H = over $100,000
2 Value Codes:	J = exempt ($0 to $1,000) N = $50,001 to $100,000	K = $1,001 to $5,000 O = $100,001 to $250,000	L = $5,001 to $15,000 P = over $250,000	M = $15,001 to $50,000
3 Value Method Codes:	Q = Appraisal U = Book value	R = Cost (real estate only) V = Other	S = Assessed value W = Estimated	T = Cash/market

FINANCIAL DISCLOSURE REPORT (cont'd)

Name of Person Reporting: Cambridge, William G.

Date of Report: April 14,198

VII. INVESTMENTS and TRUSTS--income, value, transactions. *(Includes those of spouse; partial disclosure for dependent children; see pp. 24-35 of Instructions.)*

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure.	B. Income during period Amt. Code[1] (A-H)	B. Income during period Type (e.g., div.)	C. Gross value at end of period Value Code[2] (J-P)	C. Gross value at end of period Value Method Code[3] (Q-W)	D. Transactions during period (Reporting individual and spouse) Type (e.g., sold)	D. If not exempt from disclosure Date: Month-Day	Value Code[2] (J-P)	Gain Code[1] (A-H)	Identity of buyer/seller (if private transaction)
☐ NONE (No reportable income, assets, or transactions)	The following assets are held by the W.G. Cambridge Amended and Restated Profit Sharing Plan and Trust, of which the nominee is the sole participant and for which he is a co-trustee with his wife.								
1 United States Bond Coupons	F	Int.							
2 Certificate American Charter Hastings, Nebraska	E	Int.	N	T					
3 Savings Home Federal Hastings, Nebraska	C	Int.	K	T					
4 Certificate Home Federal Hastings, Nebraska	C	Int.							
5 Certificate Home Federal Hastings, Nebraska	D	Int.							
6 Certificate Home Federal Hastings, Nebraska	B	Int.	N	T					
7									
8									
9									
10									
11									
12									
13									
14									
15									
16									
17									
18									
19									
20									

[1] Income/Gain Codes:	A = exempt ($0 to $100)	B = $101 to $1,000	C = $1,001 to $2,500	D = $2,501 to $5,000
	E = $5,001 to $15,000	F = $15,001 to $50,000	G = $50,001 to $100,000	H = over $100,000
[2] Value Codes:	J = exempt ($0 to $1,000)	K = $1,001 to $5,000	L = $5,001 to $15,000	M = $15,001 to $50,000
	N = $50,001 to $100,000	O = $100,001 to $250,000	P = over $250,000	
[3] Value Method Codes:	Q = Appraisal	R = Cost (real estate only)	S = Assessed value	T = Cash/market
	U = Book value	V = Other	W = Estimated	

FINANCIAL DISCLOSURE REPORT (cont'd)

	Name of Person Reporting	Date of Report
	Cambridge, William G.	April 14, 1988

VIII. ADDITIONAL INFORMATION or EXPLANATIONS. *(Indicate section of Report.)*

☐ Check to affirm that differences in investments from those reported in prior year are exempt from disclosure.

IX. CERTIFICATION.

In compliance with the provisions of 28 U.S.C. § 455 and of Advisory Opinion No. 57 of the Advisory Committee on Judicial Activities, and to the best of my knowledge at the time after reasonable inquiry, I did not perform any adjudicatory function in any litigation during the period covered by this report in which I, my spouse, or my children had a financial interest, as defined in Canon 3C(3)(c), in the outcome of such litigation.

I certify that all information given above (including information pertaining to my spouse and dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

Signature ______________________ Date April 14, 1988

William G. Cambridge

NOTE: ANY INDIVIDUAL WHO KNOWINGLY AND WILFULLY FALSIFIES OR FAILS TO FILE THIS REPORT MAY BE SUBJECT TO CIVIL AND CRIMINAL SANCTIONS (28 U.S.C.A. APP. I, § 304, AND 18 U.S.C. § 1001.)

FILING INSTRUCTIONS:

1. *Mail signed original and 4 additional copies to:*

   Judicial Ethics Committee
   Administrative Office of the
   United States Courts
   Washington, DC 20544

2. *Deliver one copy to the Clerk of the Court on which you sit or serve. (Judicial employees not associated with a specific court, such as employees of the Administrative Office and the Federal Judicial Center, need not file a copy with any court.)*

FINANCIAL STATEMENT

NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS			
Cash on hand and in banks		15	000
U.S. Government securities—add schedule			
Listed securities—add schedule			
Unlisted securities—add schedule		2	500
Accounts and notes receivable:			
Due from relatives and friends			
Due from others			
Doubtful			
Real estate owned—add schedule		187	000
Real estate mortgages receivable			
Autos and other personal property		50	000
Cash value—life insurance		38	200
Other assets—itemize:			
See attached schedule		406	000
Total assets		698	700

LIABILITIES			
Notes payable to banks—secured			
Notes payable to banks—unsecured			
Notes payable to relatives			
Notes payable to others			
Accounts and bills due			
Unpaid income tax			
Other unpaid tax and interest			
Real estate mortgages payable—add schedule			
Chattel mortgages and other liens payable			
Other debts—itemize:			
Life Ins. Policy Loans:			
New York Life		22	585
Transamerica Occidental		2	570
Total liabilities		25	155
Net worth		673	545
Total liabilities and net worth		698	700

CONTINGENT LIABILITIES	NONE		
As endorser, comaker or guarantor			
On leases or contracts			
Legal Claims			
Provision for Federal Income Tax			
Other special debt			

GENERAL INFORMATION			
Are any assets pledged? (Add schedule.)	No		
Are you defendant in any suits or legal actions?	No		
Have you ever taken bankruptcy?	No		

ADDITIONAL SCHEDULE
TO
FINANCIAL STATEMENT

UNLISTED SECURITIES

20 shares K-C, Inc.	-0-
1085 shares International Sensors, Inc.	$2,500.00
10 shares Highland Realty Company	-0-
TOTAL	**$2,500.00**

REAL ESTATE OWNED

Lot 28, North Shore Subdivision, Hastings, Nebraska -- Personal residence	$185,000.00
The North Half (N 1/2) of the East Half (E 1/2) of Lot Three (3) of the Northeast Quarter (NE 1/4) of Section One (1), Township Twenty-seven (27), Range One (1) East, Carter County, Missouri (20 acres undeveloped land)	2,000.00
TOTAL	$187,000.00

OTHER ASSETS

Individual Retirement Account--American Bar Association--Equitable Life Assurance Society	$ 9,500.00
W.G. Cambridge Amended and Restated Profit-Sharing Plan and Trust (Keogh Plan)	169,700.00
20% interest in Kerr-Cambridge, a Nebraska Partnership	15,000.00
State of Nebraska Pension Plan	24,300.00
5 Limited partnership units in Search-1979	-0-
5 Limited partnership units in Search-1981	-0-
Cash in Savings & Loan Associations	187,500.00
TOTAL	**$406,000.00**

AMERICAN BAR ASSOCIATION
Standing Committee on Federal Judiciary
1800 M Street, NW
Washington, DC 20036
(202) 331-2210

CHAIRMAN
Harold R. Tyler, Jr.
30 Rockefeller Plaza
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One Monument Square
Portland, ME 04101

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New York, NY 10004

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FOURTH CIRCUIT
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1410 First Virginia Bank Tower
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Norfolk, VA 23510

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NINTH CIRCUIT
J. David Andrews
1900 Washington Building
Seattle, WA 98101

Samuel L. Williams
45th Floor
355 South Grand Avenue
Los Angeles, CA 90071

TENTH CIRCUIT
James A. Clark
Suite 1100
303 East 17th Avenue
Denver, CO 80203

ELEVENTH CIRCUIT
M. Roland Nachman, Jr.
Post Office Box 78
2 Dexter Avenue
Montgomery, AL 36101

DISTRICT OF COLUMBIA CIRCUIT
James J. Bierbower
International Square
Suite 1275
1875 I Street, NW
Washington, DC 20006

FEDERAL CIRCUIT
John D. Lane
Suite 600
1666 K Street, NW
Washington, DC 20006

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Fallbrook, CA 92028

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1800 M Street, NW
Washington, DC 20036
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ABA/NET: ABA 461

April 20, 1988

CONFIDENTIAL

The Honorable Joseph R. Biden, Jr.
Chairman, United States Senate
Committee on the Judiciary
Washington, D.C. 20510

Re: WILLIAM G. CAMBRIDGE
United States District Court
for the District of Nebraska

Dear Senator Biden:

Thank you for affording this Committee an opportunity to express an opinion pertaining to the nomination of William G. Cambridge for appointment as Judge of the United States District Court for the District of Nebraska.

A substantial majority of our Committee is of the opinion that Judge Cambridge is "Qualified" for this appointment. The minority found him to be Not Qualified.

Sincerely yours,

Harold R. Tyler, Jr.
Chairman

cc: All Committee Members

Nebraska District Court

5 = Excellent (performance is outstanding)
4 = Good (performance is above average)
3 = Satisfactory (performance is adequate)
2 = Deficient (performance is below average)
1 = Very Poor (performance is well below average and unacceptable)

		Merritt C. Warren, Creighton	William G. Cambridge, Hastings	Bernard Sprague, Red Cloud*	Joseph D. Martin, Grand Island	William H. Riley, Grand Island	DeWayne Wolf, Kearney*	John P. Murphy, North Platte*	Jack H. Hendrix, McCook	Edward E. Hannon, O'Neill
Characteristics		**Average Scores**								
1. Knowledge and application of substantive law		4.58	3.78	3.88	2.81	3.86	3.92	3.73	4.18	4.01
2. Knowledge and application of rules of evidence and procedure		4.54	3.70	3.88	2.89	3.69	3.82	3.82	4.14	4.04
3. Ability to perceive factual and legal issues		4.46	3.70	3.98	2.88	3.86	3.93	3.92	4.17	4.00
4. Awareness of recent legal developments		4.44	3.93	4.04	2.96	3.93	4.00	3.91	4.02	4.05
5. Absence of bias or prejudice in civil cases		4.28	3.39	3.92	2.98	4.01	3.63	3.73	4.35	3.80
6. Absence of bias or prejudice in criminal cases		4.18	2.90	4.10	3.47	3.97	3.67	3.80	4.20	3.78
7. Absence of bias or prejudice in domestic relations cases		4.17	3.06	3.92	3.07	3.87	3.14	3.75	4.14	3.65
8. Not influenced by nature of case		4.20	3.24	3.83	3.20	3.82	3.44	3.72	4.05	3.59
9. Not influenced by identities of lawyers involved		4.11	3.48	3.50	2.71	3.80	3.34	3.74	4.26	3.69
10. Not influenced by identities of litigants involved		4.22	3.57	3.80	3.22	3.90	3.68	3.83	4.30	3.62
11. Not influenced by improper, ex parte approaches		4.34	3.65	3.70	3.12	3.91	3.60	3.88	4.53	3.88
12. Patience and courtesy to litigants, witnesses & jurors		4.51	3.85	4.20	3.93	4.47	3.98	3.94	4.72	3.92
13. Patience and courtesy to lawyers		4.45	3.50	4.17	3.87	4.40	3.84	3.92	4.70	3.74
14. Judicial temperament and demeanor		4.53	3.62	4.21	3.55	4.34	3.87	3.94	4.69	3.85
15. Efficiency in docket management		4.50	3.68	3.78	3.06	4.17	4.11	3.87	4.07	4.07
16. Punctuality in attending court proceedings		4.59	3.41	3.63	3.80	4.42	4.28	4.09	4.61	4.40
17. Promptness in making rulings and giving decisions		4.57	3.40	3.74	3.09	4.17	3.88	3.97	3.79	3.98
18. Attentiveness to arguments and testimony		4.45	3.71	3.89	3.29	4.12	3.78	3.69	4.43	4.12
19. Management and control of trial		4.51	3.72	4.09	3.42	4.08	4.05	3.79	4.36	4.04
20. Efficient and conscientious worker		4.67	3.98	3.81	2.96	4.25	4.15	3.80	4.57	4.21
21. Quality and clarity of written opinions		4.45	3.68	3.73	2.78	3.87	3.81	3.83	4.06	3.78
22. Absence of undue personal observations or criticisms of litigants, judges, and lawyers from the Bench or in written opinions		4.44	3.69	4.15	3.88	4.34	3.84	3.89	4.60	3.87
A. Is the judge's health such that the judge can effectively discharge the duties of judicial office?	% Yes	91.0	83.9	95.0	87.5	96.7	90.2	94.5	97.2	97.1
	% No		2.6	.9	1.5			2.7	.9	
	% N.Op.	8.9	13.3	3.9	10.9	3.2	9.7	2.7	1.8	2.8
B. In your opinion, should this judge be retained in office?	% Yes	99.1	80.5	94.1	66.6	95.3	88.0	88.1	99.0	91.4
	% No	.8	15.9	2.9	24.2	1.5	10.8	10.5	.9	8.5
	% N.Op.		3.5	2.9	9.0	3.0	1.0	1.3		
Approximate number of persons who rated this judge:		113	113	103	66	66	93	76	111	71

*Stands for retention in 1986

CONFIRMATION HEARING ON: FERN M. SMITH, JAN E. DuBOIS, AND STUART A. SUMMIT

TUESDAY, JUNE 21, 1988

U.S. Senate,
Committee on the Judiciary,
Washington, DC.

The committee met, pursuant to notice, at 2:20 p.m., in room SD-226, Dirksen Senate Office Building, Hon. Paul Simon (acting chairman) presiding.

Also present: Senators Thurmond and Specter.

Staff present: Steven J. Metalitz, chief nominations counsel; Andrew Rainer, investigative counsel; Robert Short, minority chief investigator.

Senator Simon. The committee hearing will come to order. My opening statement will be placed in the record.

[Prepared statement follows:]

Opening Statement of Senator Paul Simon

This afternoon the Judiciary Committee holds its 29th hearing in this Congress to consider nominations to the lower federal courts.

Today, we will take testimony on three nominations. Two nominees are for the District Courts: Judge Fern Smith, for the Northern District of California, and Mr. Jan Dubois for the Eastern District of Pennsylvania. We will also take further testimony on the nomination of Stuart Summit to be United States Circuit Judge for the Second Circuit.

As we customarily do, we will hear first from Senators who wish to introduce nominees to the Committee. Before we begin, let me note for the record that Judge Smith and Mr. Dubois, like all other nominees before the Committee, have completed extensive questionnaires on their qualifications, experience, and financial situation. The publicly available portions of these questionnaire responses will be printed in the record of this hearing. Mr. Summit's questionnaire responses were included in the record of the first hearing on his nomination. We will also keep the record open for follow-up questions to the nominees, and for additional questions that may be submitted by members of the Committee who are unable to be present this afternoon. We will also include in the record the complete introductory statements of Senators, and the written testimony submitted by the witnesses.

Senator Simon. We have two nominees before us today, the Honorable Fern Smith and Jan E.—do you pronounce it DuBois or DuBois?

Mr. DuBois. I pronounce it DuBois.

Senator Simon. DuBois, all right.

I see three of our colleagues coming in right now. May I ask the two nominees to come to the witness table, and then I will call on our colleagues for a few words. Please, have a seat. We are very pleased to have you here.

Let me call first on Senator Wilson from California for a word or two about the California nominee.

STATEMENT OF HON. PETE WILSON, A U.S. SENATOR FROM THE STATE OF CALIFORNIA

Senator WILSON. Thank you very much, Mr. Chairman.

Mr. Chairman, I am grateful for this opportunity to introduce to the committee a very distinguished jurist, Judge Fern M. Smith, who has been nominated by the President to serve on the U.S. District Court for the Northern District of California.

Earlier this year, I recommended her nomination to the President after reviewing the work of my screening committee in the northern district, which found her to be exceptionally well qualified.

Their judgment, I think, reflects a widespread belief that Judge Smith has been not only conscientious and fair, but also an extremely effective jurist. She has served as a member of the Superior Court of California in San Francisco.

She did not follow a typical path into the law, having waited a few years after high school to pursue college and then law school. But as her résumé makes crystal clear, once she sets her sights on a goal, she not only attains it, but does so with great distinction.

Judge Smith graduated first in her class from Foothill Community College, then went on to Stanford University where she earned her bachelor's degree, as well as membership in Phi Beta Kappa. Judge Smith continued at Stanford for her law degree, graduating in 1975.

In her 13 years as an attorney, Judge Smith spent most of her time as a civil litigator at a major San Francisco law firm, Bronson, Bronson and McKinnon. Since her appointment to the Superior Court bench in September of 1986, she has served with great distinction, hearing a variety of criminal cases. So she has balanced her civil experience as a litigator with time on the bench hearing a variety of criminal cases of some complexity.

In the process, both as a lawyer and as a judge, Judge Smith has gained the admiration and the respect of her colleagues in the legal community, having been endorsed not only by the Bar Association of San Francisco, but also by the Queens Bench, a professional legal organization of women lawyers very much concerned with the kind of role model that she has been for other lawyers—men and women.

I think that they have recognized that her work as a practitioner and as a jurist, as well as her efforts to promote the advancement of women, has been a very considerable advantage to women seeking a legal career and to those aspiring to the bench.

Mr. Chairman, I am convinced that after careful consideration of Judge Smith's experience, her training, her temperament, the committee will share the view not only of the local bar but of her fellow practitioners on the bench—that is, her fellow jurists—and will agree that she is particularly well qualified to serve on the Federal bench, to continue distinguished judicial service.

I could take more time, but the committee is in possession of her very distinguished record, and in the interests of your time and hers, I will allow that record to speak eloquently for itself.

I will only conclude by saying that of the many appointments I have been privileged to recommend to the President, this is very clearly one of the most popular, and I think it is deservedly so. It is based on a reputation that has enlisted support from virtually all quarters.

This is a distinguished candidate and I am very proud to have recommended her to the President.

Senator SIMON. Thank you, Senator Wilson.

Judge, do you have any members of your family here you would like to introduce?

Judge SMITH. I do, Mr. Chairman. I would like to introduce my husband, Robert Burrows, who is here from San Francisco with me today, to the committee.

Senator SIMON. We are happy to have you with us here.

Let me call on the senior Senator from Pennsylvania for a word about the nominee from Pennsylvania.

STATEMENT OF HON. JOHN HEINZ, A U.S. SENATOR FROM THE STATE OF PENNSYLVANIA

Senator HEINZ. Well, Mr. Chairman, thank you very much. It is really a great pleasure to join with my distinguished colleague, Senator Specter, to introduce to the committee Jan DuBois, the President's nominee to fill a recent vacancy on the U.S. District Court of the Eastern District of Pennsylvania, and I thank you for holding this hearing expeditiously.

I think it is fair to say that Jan DuBois is an extremely well respected attorney from our State, with some 30 years of legal experience. He has been a member of a very respected and esteemed Philadelphia law firm since 1958, a partner since 1964.

He has had broad experience in litigation, and after his graduation from the University of Pennsylvania with a BA, he went to the Yale University Law School, something that at least one other person in this room has done, as I gaze at my colleague from Pennsylvania.

He also served 2 years in the Army, and shortly thereafter embarked on his legal career, first as a clerk with the U.S. Justice Department and then the following year as a clerk with the U.S. Court of Appeals for the Third Circuit.

Jan DuBois is currently a trustee and past president of the Philadelphia Bar Foundation, which is the charitable arm of the Philadelphia Bar Association, and the Foundation, in which Jan has been actively involved since 1982, supports many public service law projects which provide, among other things, legal services to persons in special need who are otherwise unable to obtain such counsel themselves. That would include abused women and children most specifically, the indigent, the elderly, and many others.

Mr. Chairman, I would only like to add that Jan DuBois was recommended to Senator Specter and me by the bipartisan merit selection commission that he and I established many years ago.

That commission actively seeks out qualified candidates to the courts, and it has recommended Jan DuBois as being among the very best for appointment to the Federal judiciary. In addition, the American Bar Association has rated him as well qualified to serve on the U.S. District Court for the Eastern District of Pennsylvania.

Mr. Chairman, on a personal note, I know Jan and his family. They are wonderful people. It is also true that he has all the experience, the approach to the law, the sense of justice, and the kind of wisdom that I think we all would want to see in a judicial candidate for the bench.

So I urge the committee to act expeditiously on his confirmation as judge of the District Court for the Eastern District of Pennsylvania. Thank you.

Senator SIMON. I thank you, and I assume your colleague may have a word or two here, also.

Senator Specter.

STATEMENT OF HON. ARLEN SPECTER, A U.S. SENATOR FROM THE STATE OF PENNSYLVANIA

Senator SPECTER. Thank you very much, Mr. Chairman.

I am delighted to join my colleague, Senator Heinz, in presenting Jan E. DuBois to this committee for consideration today. The nomination of Jan DuBois, I think, is an outstanding one.

It is true that he and I have been personal friends since college days at the University of Pennsylvania, going back to 1948. But notwithstanding that fact, the evidence in support of his nomination is overwhelming.

He is a lawyer's lawyer. He will come to the Federal bench ready to hit the ground running at top speed. He knows Federal practice thoroughly. He has been in the courts competitively. He knows the rules of procedure, he knows trial practice, he knows the substantive law.

The criminal aspect is something that I know he will acquaint himself with very, very fast. He makes a tremendous financial sacrifice to take the position on the Federal court, and he is superbly well qualified to do so.

He has an outstanding academic career, in addition to the fact that he went to the Yale Law School. He has been with a prestigious firm, as Senator Heinz has specified.

He has done extensive work in public service and in charitable activities. The one item not listed is that he is the president of his synagogue, which is a very, very laborious task, a very important public service, with very significant charitable overtones in that important work.

It is a great thing for a man with Jan DuBois' background to come to the Federal bench on a personal level. We are still able to attract lawyers of outstanding capability, and I am pleased to see that he is here today with Fern Smith, who has an outstanding record. Her consideration will be on the same day as his, and it is a capping of a great career.

Jan DuBois' family is here today, a family whom I know very well; his bride, Ruth, whom I met when he brought her to the Yale Law School the year before they were married. My wife, Joan, and

I have watched their children come into this world and move forward and be educated.

It is a great day for Bud DuBois personally, a great day for his family, but, Mr. Chairman, I suggest a great day for the Federal court system to have a man of his capability move to that very important position to dispense justice in a very, very complicated city with complicated problems and problems that he is uniquely suited to tackle.

Thank you, Mr. Chairman.

Senator SIMON. Thank you, Senator Specter.

Mr. DuBois, I gather you do have some members of your family here.

Mr. DUBOIS. I do, Mr. Chairman.

Senator SIMON. Would you like to introduce them at this time?

Mr. DUBOIS. I also have some friends here. Is it permissible to introduce the entire claque?

Senator SIMON. Yes.

Mr. DUBOIS. Fine, Your Honor.

First, my wife, Ruth. I have three of my four children here, Jon; my son, Peter; my daughter, Pamela; and classmate of my son Jon's, Heidi Katz. I also have my sister here, my sister, Bunchie Gerdner and I am not finished yet—my brother-in-law, Alan Harberg. They are not married.

Strangely enough, while my family was at the Gaugain exhibit today, they met two cousins, a first cousin of mine, Elmer and Jacqueline Jaspin from Louisville, Kentucky; they are here. [Laughter.]

Mr. DUBOIS. I am not finished, Mr. Chairman.

Senator SIMON. Perhaps I should ask is there anyone here not related to Mr. DuBois. [Laughter.]

Mr. DUBOIS. My eldest son is out of the country. He is in Holland completing his graduate studies, but he sent a good friend of his and a good friend of mine, Roger Spiegel. I would also like to introduce a longtime friend, although he went to the other law school—he went to Harvard Law School—Steve Harmelin and his daughter, Allison.

Last but not least, I was surprised, Mr. Chairman, by four members of my firm who arrived unannounced; two associates, Nancy Siegel, Cheryl Adelman; our librarian, Heidi Bliss; and my law clerk, who has struggled with me for 3 years and who has just graduated from law school and is beginning the practice of law in New Hampshire, Carrie Smith.

Now, if I have forgotten anyone, I apologize. [Laughter.]

Senator SPECTER. Now, Mr. Chairman, you see how important it is that this be a successful presentation. [Laughter.]

Senator SIMON. Yes.

Senator SPECTER. And one footnote; Peter DuBois is a resident of the great State of Illinois and a constituent of yours. [Laughter.]

Senator SIMON. Obviously, a great family you have here. [Laughter.]

Mr. DUBOIS. Thank you, Mr. Chairman.

Senator SIMON. Thank you, and we are pleased to have Senator Wilson and Senator Heinz here, but feel free to leave at any point.

Senator Thurmond, before we swear them in, do you wish to add anything?

Senator THURMOND. I just want to congratulate Mr. DuBois, and also Ms. Smith upon their appointments by the President. I congratulate you on having such able, influential Senators here endorsing you.

I know of no objection to either one of you. I will be glad to support you, and good luck to you and God bless you.

Mr. DUBOIS. Thank you very much.

Judge SMITH. Thank you, Senator.

Senator THURMOND. I have got another appointment to go to the floor and I will have to leave.

Senator SIMON. All right.

If the two of you will stand and raise your right hands, do you swear to tell the truth, the whole truth, and nothing but the truth, so help you God?

Judge SMITH. I do.

Mr. DUBOIS. I do.

Mr. Chairman, should I——

Senator SIMON. You can both sit there, or whatever you prefer. We will take Judge Smith first here.

Judge Smith, in glancing through the record, one of the things I have been looking for occasionally is pro bono work. I may have missed that, but I do not see that in your record. Have you been involved in pro bono work as a lawyer when you were in the private practice?

TESTIMONY OF HON. FERN M. SMITH, SAN FRANCISCO, CA, TO BE U.S. DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF CALIFORNIA

Judge SMITH. Yes, I was, Mr. Chairman. The primary involvement that I had was through recruiting. I was named to my firm's hiring committee when I was a first-year associate. I remained on that committee for 8 years and spent a great deal of time traveling around the country to various law schools with the primary interest of increasing the number of women and minority attorneys that were associated with our law firm. I felt the numbers were quite significant by the time I left.

Additionally, I was on the management committee of my law firm the last 2 years of my practice. We endorsed the firm's participation in a storefront legal clinic sponsored by the San Francisco Bar Association.

Further, I taught at workshops for women lawyers, advocacy training, and since I have been on the bench, the Chief Justice of the California Supreme Court has nominated me to a task force studying gender bias in the courts, with an attempt to discover the depth, if any, of such bias as it relates to women litigants, women attorneys, and/or staff members, and once we find whether it does exist to move quickly towards correcting it.

Senator SIMON. I applaud what you have done. I guess one of the things—and I am not picking on you now, Judge Smith.

Judge SMITH. Certainly.

Senator SIMON. One of the things for whoever is here representing the Justice Department that I would like to see a little more of as I look at nominees is people who have been directly involved in work, who have been in that storefront office, if you will, and not just those who have been involved in saying members of our firm should do it. I think it is important for a member of the bar, for a judge, to have a sensitivity to those who are less fortunate.

You mentioned that you are heading an effort on gender bias at the request of the Chief Justice of the State court, I believe it was.

Judge SMITH. That is correct.

Senator SIMON. What have you found in that?

Judge SMITH. Well, we have just started. The reports are not out, since it is a fairly new committee. We held private hearings in various cities throughout the State at which we invited members of the bar to discuss what they see as problem areas in their particular jurisdictions.

The hearings were private because we were concerned that if these meetings were open to the public, attorneys who practice before certain judges or with certain lawyers would be hesitant to be forthright.

We have just concluded those hearings and the data is being compiled. Once we've done that, we will hold public hearings throughout the State. Because it is such a new committee, I don't have any information about the bottom-line results as yet.

Senator SIMON. Yes, but what is your overall impression?

Judge SMITH. I was on the first panel, which covered an area of several small towns. There was great concern on the part of women lawyers that women litigants were unintentionally being treated unfairly by the courts. There was also concern that more support be given to women litigants, for example waiting rooms in the courts so that women with small children had access to court without being prejudiced because they had no one to care for their children.

In general, there was a feeling that the attitude towards women litigants and lawyers is improving, but there are still problems, and we need to remain sensitive to them and keep working on them.

Senator SIMON. I notice that when you were in private practice, you did not handle criminal cases.

Judge SMITH. That is correct.

Senator SIMON. But on the Superior Court, I assume you have been involved.

Judge SMITH. I have been involved primarily in either quasi-criminal or criminal cases since my appointment. My first 10 months was as Judge of the Juvenile Court in the juvenile delinquency area. Since August 1 of 1987, I have been assigned to a felony trial court and have presided over a criminal calendar. During that time, I have dealt with most of the common criminal charges that exist under State law.

Senator SIMON. And do you feel it will take you long to get up to speed in terms of Federal criminal law and handling things in the district court?

Judge SMITH. I don't think so, Mr. Chairman. California criminal law does not differ that dramatically from Federal law or procedure. Certainly, I still have a lot to learn, but I have enjoyed my stint on the criminal bench. I find it interesting, and I think I have a head start because of that time.

Senator SIMON. Thank you.

[The following material was received for the record:]

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926 J Street, Suite 714
Sacramento, CA 59814
916 441-3703

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Santa Barbara
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Deborah Vollmer
Bakersfield
Marilyn Wicynski
Hawthorne
Karen Worth
San Rafael
Barbara Zuniga
Walnut Creek

June 16, 1988

Honorable Patrick J. Leahy
and Honorable Members
Senate Judiciary Committee
224 Dirksen Building
Washington, D.C. 20510-6275

Re: Evaluation of Judge Fern Smith
for U.S. District Court, Northern California

Dear Senator Leahy and Senate Judiciary Committee Members,

Pursuant to her request, Judge Fern Smith was evaluated by the Board of Governors of California Women Lawyers for appointment to the U.S District Court. On August 19, 1986 Governor Deukmejian appointed her to the Superior Court for the State of California, County of San Francisco.

In our evaluation process, we contacted 25 persons who responded to our questions regarding Judge Smith's legal ability, judicial temperament, and commitment to feminism. She received excellent ratings in all areas, overwhelmingly so with respect to her work habits and temperament. She is considered exemplary and is highly respected in the legal community.

Her legal knowledge and aptitude are exceptional, especially considering that she took her first college course at the age of thirty-four while married and the mother of two children. Twenty years later, she epitomizes the kind of judge before whom every lawyer hopes to appear.

Based on the foregoing, we are pleased to rate Judge Fern Smith extremely well qualified for the U.S District Court. We believe that she would be a very valuable asset to the federal bench.

Very truly yours,

Pauline Weaver

Pauline Weaver
President

cc: Judge Fern Smith

AFFILIATES: *Black Women Lawyers Association of Los Angeles; Committee on Women Lawyers, Santa Clara County Bar; Fresno Women Lawyers; Inland Counties Women at Law; Kern County Women Lawyers; Lawyers Club of San Diego; Los Angeles Lesbians in Law; Marin County Women Lawyers; Monterey County Women Lawyers; Napa County Women Lawyers; Orange County Women Lawyers; Queen's Bench; San Fernando Valley Women Lawyers; San Francisco Women Lawyers Alliance; Solano County Women Lawyers; Sonoma County Women in Law; South Bay Women Lawyers; Women Lawyers Association of San Luis Obispo County; Women Lawyers of Alameda County; Women Lawyers of Long Beach; Women Lawyers of Sacramento; Women Lawyers of Santa Cruz County; Women Lawyers of Ventura County; Women Lawyers' Association of Los Angeles; Women's Section, Contra Costa County Bar; Women's Section, San Mateo County Bar.*

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May 5, 1988

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PERSONAL AND CONFIDENTIAL

Steven J. Metalitz
Chief Nominations Counsel
Committee on the Judiciary
United States Senate
Washington, D.C. 20510-6275

Re: Nomination of Fern M. Smith
United States District Court
Northern District of California

Dear Mr. Metalitz:

I am the Chair of the Judiciary Committee of the Bar Association of San Francisco. That committee evaluates nominees for judicial office and reports to the appointing, recommending or approving authority. Its powers and duties are set forth in Article IV of the Association's By-Laws, a copy of which is enclosed.

Section 1(c) of Article IV of those By-Laws gives the Judiciary Committee discretion to conduct an evaluation of a candidate in the absence of a request by the appointing authority, and the committee has done so in the case of Judge Smith. The evaluation was conducted in accordance with the procedures set forth in Section 7 of Article IV.

This is to advise the Senate's Committee on the Judiciary that Judge Smith received a rating of "exceptionally well qualified" for appointment to the United States District Court for the Northern District of California from the Judiciary Committee of the Bar Association of San Francisco. For your information, from the eight members present, Judge Smith received eight votes for exceptionally well qualified.

San Francisco Bar Center at the Monadnock
685 Market Street, Suite 700, San Francisco, CA 94105 (415) 764-1600 Lawyer Referral (415) 764-1616

Steven J. Metalitz
May 5, 1988
Page Two

The rating "exceptionally well qualified" is described in detail in Section 5(d)(3) of Article IV of the By-Laws. A candidate is rated at the highest qualification for which s/he receives a majority of the votes cast and at least eight votes.

We hope this information is of use to the Committee in its deliberations.

Sincerely,

Charles C. Marson
Chair, Judiciary Committee

CCM:lmf

Enclosure

cc: Members of the Judiciary Committee of
the Bar Association of San Francisco

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ABA/NET: ABA 461

June 9, 1988

CONFIDENTIAL

The Honorable Joseph R. Biden, Jr.
Chairman, United States Senate
Committee on the Judiciary
Washington, D.C. 20510

Re: FERN MEYERSON SMITH
United States District Court
for the Northern District of California

Dear Senator Biden:

Thank you for affording this Committee an opportunity to express an opinion pertaining to the nomination of Fern M. Smith for appointment as Judge of the United States District Court for the Northern District of California.

Our Committee is unanimously of the opinion that she is "Well Qualified" for this appointment.

Sincerely yours,

Harold R. Tyler, Jr.
Chairman

cc: All Committee Members

Senator SIMON. Mr. DuBois, I wish I could remember his first name; there was a DuBois who was a State auditor in Illinois who served in the State legislature with Abraham Lincoln in the State of Illinois, and we have a community in Illinois in the southern part of the State called DuBois. We will have to make sure you get to DuBois, Illinois, some day.

TESTIMONY OF JAN E. DuBOIS, RYDAL, PA, TO BE U.S. DISTRICT JUDGE FOR THE EASTERN DISTRICT OF PENNSYLVANIA

Mr. DUBOIS. I'll be pleased to go there, Mr. Chairman.

Senator SIMON. Let me ask you the question on pro bono work. Have you done pro bono work as an attorney?

Mr. DUBOIS. Yes, sir, I have. I have been very active in the Philadelphia Bar Foundation, which is the charitable arm of the Philadelphia Bar Association. I was elected a trustee in 1982 and I served as president in 1987.

The Bar Foundation funds public-interest law firms, law firms that serve the indigent, abused women, abused children, and others in need of legal services who cannot afford legal services.

In addition, in that role, I have tried to raise the level of consciousness among the lawyers of Philadelphia about the problems of the needy by focusing attention on these law-related service organizations, these public-interest law firms.

I have seen to it that they have gotten more publicity in our legal newspaper, and also I have invited them to attend, and they have attended, our regular meetings of the board of trustees of the Bar Foundation. It was my thought that by raising funds and raising the level of consciousness, we could do a great deal to support these very worthwhile causes.

Senator SIMON. Again, I commend you for what you are doing. Have you had any hands-on experience with the needy, with the abused women? I guess what I am looking for is only some distant goodwill in working with the Pennsylvania Bar Foundation or with a law firm that does it, but some indication that there really is a sensitivity to those who are less fortunate.

Mr. DUBOIS. Down through the years, Mr. Chairman, on occasion, but not on a regular basis, I have represented clients who could not afford to pay for their services. I can recall a case of an individual who thought he was unfairly being kept out of the Operating Engineers. I did what I could to get him into the Operating Engineers and was successful, at no fee.

But I have not been part of any regular storefront law firm, and I am not part of any program at this stage of my career. I thought I could best serve the community by seeing to it that these various organizations were well staffed and well funded, and to that end I am one of the four or five people in the city who sponsored what we call the Equal Justice Center Project.

It is our goal to put all of our law-related service organizations under one roof because we think that will increase public awareness of what they do, and it will also be a little less expensive to operate these various organizations in one building.

Senator SIMON. I was pleased to note that although you did belong to a group whose membership excluded women, you have resigned from that group.

Mr. DUBOIS. That is correct, sir.

Senator SIMON. I think it is important that in meeting the standards, the ethical code for judges, that that be done, and I applaud your doing that.

Senator Specter.

Senator SPECTER. Thank you, Mr. Chairman.

Senator Thurmond could not stay and asked me to take his place as the ranking member of the Judiciary Committee, and Senator Thurmond has a presentation or a speech which he makes characteristically which I cannot duplicate, and shall not try to do an accent, but it goes to the effect of the obligation of those in power to be courteous.

Senator Thurmond says that the more power a person has, the more courteous that person should be, and it may be that Federal judges have more power than anyone because Federal judges are the only species known to me, at least, where it is a lifetime job. You do not have to run for reelection.

We Senators have enormous constraints, appropriately so, to keep us in relatively good humor. But I have heard Senator Thurmond comment about the importance of being courteous to lawyers, to jurors, to witnesses. I have heard him raise the admonition against shouting at anyone in the courtroom because the Federal judges have so much power.

And I know as a practicing lawyer it is not easy because there is some tendency to want to move cases along, and judges have certain prerogatives in moving cases along, but that is an item which Senator Thurmond always emphasizes, and I think with great forcefulness.

So to the extent that I can, I make Senator Thurmond's speech, and he customarily asks the nominees, if you are confirmed, "Do you promise to be courteous?" And I do not know that there is any second possible answer, but in his absence, Judge Smith, I will ask you the question. Do you promise to be courteous?

Judge SMITH. I promise to always be courteous. I have tried to be that on the California bench and I would certainly try to continue that on the Federal bench, if confirmed.

Senator SPECTER. And, Mr. DuBois, do you promise to be courteous?

Mr. DUBOIS. I do, Senator Specter. If confirmed, I promise to be a courteous judge because I've seen what happens with litigants who appear before judges who are not courteous. It can be very painful.

Senator SPECTER. Well, then if not a cause for good behavior, at least a cause for breach of commitment, should there be any breach.

I am delighted to see both of you here. You both are obviously very well qualified.

Thank you very much, Mr. Chairman.

Senator SIMON. One final question, Mr. DuBois. As I glance through the record here, I do not see any criminal law experience. I may be missing that. I have two questions; do you have criminal law experience and, second, if you do not, how do you intend to bone up, because very shortly as a district judge you will be involved in that.

Mr. DuBois. The answer to the first question, Mr. Chairman, is that I have not practiced criminal law, and that is not uncommon for attorneys in law firms in large metropolitan centers. They generally make a choice between the civil side and the criminal side, and I chose the civil side.

It is, I recognize, a very important part of the role of a district court judge, and I intend to devote a great deal of my time and energy to coming up to speed in criminal law, if confirmed by this committee.

To that end, I have received materials from that very worthwhile resource center, the Federal Judicial Center, and if confirmed, I plan to avail myself of their facilities and services, including their audio tapes, their videotapes, their live seminars.

But most importantly, I have been invited by several of our district judges with whom I am very friendly to share with them their role in criminal proceedings if I am confirmed, and I am certainly going to avail myself of that opportunity.

I want to participate as an observer in the criminal trials and other criminal matters handled by judges on the Eastern District of Pennsylvania because I think that is the best way to learn.

The long and the short of it—I think my 30 years of experience as a trial lawyer have given me the skills to quickly learn what I don't know about criminal substantive law and criminal procedure, Mr. Chairman, and I am going to tackle that task right away.

Senator Simon. I believe you, and I commend you.

[The following was received for the record:]

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ABA/NET ABA 461

May 11, 1988

CONFIDENTIAL

The Honorable Joseph R. Biden, Jr.
Chairman, United States Senate
Committee on the Judiciary
Washington, D.C. 20510

Re: JAN ELY DUBOIS
United States District Court
for the Eastern District of Pennsylvania

Dear Senator Biden:

Thank you for affording this Committee an opportunity to express an opinion pertaining to the nomination of Jan Ely Dubois for appointment as Judge of the United States District Court for the Eastern District of Pennsylvania.

Our Committee is unanimously of the opinion that Mr. Dubois is "Well Qualified" for this appointment.

Sincerely yours,

Harold R. Tyler, Jr.
Chairman

cc: All Committee Members

Senator **Simon**. We thank you both, very, very much, and we wish you the best.

Judge **Smith**. Thank you very much, Mr. Chairman.

Mr. **DuBois**. Thank you, Mr. Chairman.

Senator **Simon**. We have two witnesses, I am told. First, Mr. Lee Kreindler, who is an attorney from New York. Is Mr. Kreindler here?

Mr. **Kreindler**. Yes, Mr. Chairman.

Senator **Simon**. If you will raise your right hand, do you swear to tell the truth, the whole truth, and nothing but the truth, so help you God?

Mr. **Kreindler**. I do.

Senator **Simon**. Before we begin the testimony of Mr. Kreindler, and the response from the nominee, Stuart Summit, I will place in the record the full text of Mr. Kreindler's written statement, as well as the following materials received by the Committee with respect to the issue on which Mr. Kreindler will testify:

1. Letter of Lee Kreindler, May 3, 1988, with enclosures
2. Letter of Stuart Summit, June 15, 1988, with enclosure
3. Letter of Sidney Stein, June 18, 1988
4. Letter of Marshall Morgan to Lee Kreindler, June 20, 1988

The committee has also received some correspondence concerning the case of *Arenstein* v. *Huston,* a case handled by the nominee's law firm, although the nominee has testified that he was not involved in this case. Because these letters do touch on the qualifications of Mr. Summit for the post to which he has been nominated, we will include them in the record also, as follows:

5. Letter of David Rosenberg, May 20, 1988
6. Letter of Barry Huston, June 16, 1988

[The aforementioned material follows:]

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(212) 687-8181
CABLE "KREINDLAIR NEW YORK"
TELEX: 14-8305
TELECOPIER (212) 972-9432

HARRY E. KREINDLER (1919-1984)
LEE S. KREINDLER
PAUL S. EDELMAN
MELVIN I. FRIEDMAN
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FRANCIS G. FLEMING*
STEVEN R. POUNIAN
JAMES P. KREINDLER

MILTON G. SINCOFF
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*ALSO ADMITTED IN NEW JERSEY
PENNSYLVANIA AND ARIZONA
†ALSO ADMITTED IN NEW JERSEY

May 3, 1988

United States Senate
Committee on the Judiciary
224 Dirksen Building
Washington D.C. 20510

Attention: Steven J. Metalitz, Esq.
Chief Nominations Counsel

Re: Nomination of Stuart A. Summit to the
United States Court of Appeals for the Second Circuit

Dear Mr. Metalitz:

This will acknowledge receipt of the transcript of the hearing of April 21, 1988, and will respond to your request that I comment on Mr. Summit's testimony, insofar as it relates to my case.

Acknowledging the accuracy of Senator Leahy's description of the case (p. 30), and the harsh words of Justice Meyers' Opinion, Mr.Summit stated that the tactic of sending out the egregious letters was not his idea, "and indeed I advised against it....".

> "I advised our clients not to write those letters. I told them that I thought it very likely that if they did write those letters they would be the subject of an injunction, and unfortunately my prediction was correct." (P.32)

Mr. Summit also said he was not involved in the Huston - Arenstein case, in which "freeze" letters had similarly been sent out. That case, he said, was handled by his partner, David Rosenberg. (P. 36).

The moving paragraph of the Rosenberg "freeze" letters is similar to that of the letters my former partners sent out in April, however. This suggests the possibility that even if it was his clients' idea, it was Mr. Summit, or someone working under him, who brought the egregious technique to their attention.

Furthermore, Mr. Summit cannot escape responsibility even if it was their idea. He was running the case. He was in charge of it. He was aggressively pushing settlement based on the coercive effect of the letters.

Mr. Summmit denied he sent out letters himself and acknowledged their impropriety:

> "No, I did not, Senator. They sent those letters themselves. We would not have sent those letters and we did not." (P.33)

Shown his letter to Carl Tuerk of April 26, 1985, however, Mr. Summit recanted, and acknowledged that he had written such a letter. (P. 34)

Thus Mr. Summit admitted doing what he advised his clients "as a legal matter... they were not able to do" (P. 33) and what "would be the subject of an injunction." (P. 32).

Mr. Summit's attempt to distinguish his letter is fatuous. He says it was to a well known lawyer in Baltimore "explaining the entire argument as to why that was a fair request" (P. 34). But all of the letters in question were to well known lawyers or insurance claims executives, and all purported to explain the argument. There is no distinction.

There is no significant difference between the Summit letter to Carl Tuerk, and his clients' letter to George Tompkins (attached hereto), for example, except that Mr. Summit's letter was more effective. Mr. Tompkins is one of the leading aviation defense lawyers in the country and is far better known than Mr. Tuerk. Fortunately for my firm most of the recipients of those letters, including Mr. Tompkins, did not comply with the request. Mr. Tuerk did, however, and held back a sizeable sum of money belonging to my firm for several months. (See Judge Meyers' Opinion, P. 3) Mr. Summit used this as a bargaining chip in his effort to get us to cave in to an unwarranted settlement.

It is relevant to compare the letters Mr. Summit's partner, David Rosenberg, sent out on February 22 and March 1, 1985 with the letters Mr. Summit's clients sent out April 19, 1985 and the letter Mr. Summit himself sent out April 26, 1985. The moving paragraphs of each read:

> "Moreover, until the disputes between Messrs. Arenstein and Huston are resolved, neither is authorized to accept settlement monies on behalf of any firm client until those monies are paid to both of them. Accordingly, checks should be made payable to Arenstein & Huston, P.C., Robert D. Arenstein and Barry S. Huston, as attorneys." (Rosenberg letters of February 22 and March 1, 1985)

> "In order to assure that our interests are protected, we would expect that [you] would promptly notify us of any settlements or dispostions as they occur and [you] should make all checks payable to our two firms jointly." (Levy letters of April 19, 1985)

> "Specifically, we request on their behalf that any check to be issued be made payable to both Kreindler & Kreindler and Levy

> Phillips & Konigsberg jointly." (Summit letter of April 25, 1985)

The importance of this is that it displays an underlying attitude toward the law that makes Mr. Summit unfit to be a judge. These letters were an attempt to coerce; an effort to achieve a result by the use of economic pressure, rather than facts, law and justice. In my case we were able to survive it, although the experience was frightening. In Mr. Huston's case it drove him into bankruptcy.

I don't think the architect, or even the administrator, of such a policy should be a judge.

Mr. Summit tries to defend his clients' conduct:

> "The Kreindler and Kreindler firm was, in their judgment, starving them out by declining to make any distributions to them of monies as they came in." (P.33)

That testimony is misleading. Under the K&K partnership agreement, originally drawn up by Joseph Iseman of the Paul Weiss, Rifkind, Wharton and Garrison firm (our firm's lawyers for years), the firm has a continuing existence and does not dissolve upon retirement by one or more partners. A retiring partner is entitled to substantial retirement payments over a period of seven years. This is, explicitly, in lieu of distributions out of incoming money or interests in pending cases. The Levy partners were not entitled to money coming into the firm, and they and Mr. Summit knew it.

In his testimony Mr. Summit claimed to be a peacemaker; one who tries to settle cases. My case, however, was one in which he started off with a settlement; a valid partnership agreement drawn up by one of our leading firms years before, and signed many times by his clients. The partnership agreement resolved all questions concerning the relative rights and responsibilities of retiring partners and the firm. It was Mr. Summit who advised his clients to break their contract. He unsettled the case.

Mr. Summit characterized our situation as the "breakup of the firm known as Kreindler and Kreindler," and he said his clients had "almost half the equity interest in that firm." (PP. 29, 33) Neither statement was correct.

There was no "breakup" of our firm. The firm continues to exist today at the same address, under the same name, and operating under the same partnership agreement it has had for the last twenty five years. Mr. Summit's clients had an equity interest of 31.7%, and not "almost half".

Under Mr. Summit's tutelage they went through the charade of participating in the election of two new partners (two associates working with them), in violation of their fiduciary duty of disclosure to us as partners. And under his direction they renounced the partnership agreement they had signed many times over the years.

Other partners had left our firm on several occasions, but no one, until Mr. Summit came along, suggested that lawyers should repudiate their solemn agreements. He was, therefore, a cause of the costly and unnecessary litigation he now decries. Mr. Summit testified:

> "I viewed that as a terrible example of what lawyers can do to each other and I felt badly about it throughout. From the beginning of our having been retained on the matter I almost begged our adversaries to agree on a mediator or an arbitrator."

This was a false picture. First, Mr. Summit was responsible for the disgusting picture of lawyers reneging on their own signed contract. Then he at least condoned a scenario in which an effort was made to coerce us into submission. This infuriated us. There was no way we would agree to a mediator or arbitrator in the face of this meritless claim and coercive approach. Now, to gain Committee approval, he testifies that he was trying to be a peacemaker.

Mr. Summit's handling of our case cannot be excused as aggressive advocacy. I am an aggressive advocate, but I work within the legal and ethical rules.

The litigation, in my case, was unneccessary, onerous, and extremely expensive. It cost my firm over a million dollars to defend ourselves, and it may well have been even more expensive for our former partners. It was the product, however, of Mr. Summit's advice to his clients that they should try to break their contract and the effort to drive us into submission by conduct so outrageous that it was enjoined by the court.

If you have any further questions please do not hesitate to let me know. I am prepared to testify if the Committee wishes to hear from me personally.

Respectfully yours,

Lee S. Kreindler

Lee S. Kreindler

pr
encs.

(Via Federal Express
Airbill No. 7237502403)

LSK

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(609) 275-[illegible]

April 19, 1985

George K. Tompkins, Jr., Esq.
Condon & Forsyth
1251 Avenue of the Americas
New York, NY 10020

Re: Kreindler & Kreindler Settlements

Dear George:

As you probably know, the Kreindler & Kreindler firm has essentially divided with myself, Alan Konigsberg and three other partners establishing the new firm of Levy Phillips & Konigsberg, and Lee, Marc and three others continuing to practice under the name of Kreindler & Kreindler, with Milt having also resigned from the firm and entering into some of counsel relationship.

As partners in the old Kreindler firm at the time, I and my present partners have an interest in any settlements or judgments that the Kreindler firm may have obtained or will reach in the future with respect to any cases that existed before the separation.

However, information about case inventory and any settlements which have been made since January or any monies which may have been paid to the Kreindler firm in connection with settlements prior to that date has been kept from us. Therefore, I would appreciate it if you could let me know what cases Condon & Forsyth has settled with the Kreindler & Kreindler firm since January 1, 1985 and whether payments have been made to the firm since that date. In addition, each former partner has asserted an interest in the cases that the Kreindler firm was prosecuting at the time of the division. In order to assure that our interests are protected, we would expect that Condon & Forsyth would promptly notify us of any settlements or disposition as they occur and should make all checks payable to our two firms jointly.

Best regards.

Very truly yours,

Stanley J. Levy

wc

BURNS SUMMIT ROVINS & FELDESMAN
445 PARK AVENUE NEW YORK 10022
—
212-702-2800

WILLIAM A ALPER
JOSEPH D ALPERIN
JOHN L AMABILE
HOWARD B [illegible]
JEROME J HORG
ARNOLD I BURNS
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WRITER'S
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Federal Express

April 26, 1985

Carl E. Tuerk, Jr., Esq.
Cooper, Beckman & Tuerk
Suite 404 Blaustein Building
One NOrth Charles Street
Baltimore, Maryland 21201

Re: Stanley J. Levy, et al. vs. Lee S. Kreindler, et al.

Dear Mr. Tuerk:

Our clients, Stanley J. Levy, Steven J. Phillips, Alan J. Konigsberg, Ivan B. Rubin and Donald I. Marlin, have requested that I write to you to explain the nature of their dispute with their former partners at Kreindler & Kriendler.

Enclosed is a copy of the complaint in the action between our clients and their former partners, which is pending in the Supreme Court of the State of New York, County of New York. I trust you will find the complaint self-explanatory but I would note that, essentially, it is our clients' position that a written partnership agreement upon which the defendants rely is not effective to govern their relationships for a variety of reasons, including certain ethical rules, the obviously illusory nature of certain critical provisions and because the agreement was not signed by all of the partners during relevant periods.

The net effect of the pending action would be that the relationship among the partners of Kriendler & Kriendler would be governed by New York State law rather than the agreement. And one effect of that would be that each of the partners would have a specific interest in all of the partnership assets in no way limited by provisions of the written partnership agreement. Thus, our clients would each have a percentage interest in all of the firm's receivables. If the position we have taken prevails, the pre-existing Kriendler & Kriendler firm would be a partnership that had been terminated and would have to be liquidated. Were money to be received by the new Kriendler & Kriendler firm that was attributable to the pre-existing firm and not divided among the pre-existing partners, but used in the on-going business of the new Kriendler & Kriendler firm, our clients would be deprived of their appropriate shares of those monies.

Thus, our client's have requested, and this will confirm that request, that their interests be protected with respect to any amounts due by reason of their or Kreindler & Kreindler's participation in the Baltimore asbestos actions. Specifically, we request on their behalf that any check to be issued be made payable to both Kreindler & Kreindler and Levy Phillips & Konigsberg jointly.

Very truly yours,

Stuart A. Summit

SAS:rl
Enclosure

cc: Stanley J. Levy, et al.

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June 15, 1988

FEDERAL EXPRESS

Honorable Steven Metalitz
Chief Nominations Counsel
United States Senate
Committee on the Judiciary
Dirksen Senate Office Building
Room SD-224
Washington, DC 20510

Dear Mr. Metalitz:

As we discussed on the telephone today, I am enclosing the opinion of Professor Carolyn Gentile regarding my letter of April 26, 1985 to Carl E. Tuerk, Jr. I requested Professor Gentile to determine whether in her opinion my letter was in violation of any ethical prohibition. You will see that Professor Gentile concluded that that letter was not subject to appropriate ethical criticism.

I should note that I requested Professor Gentile to review the situation and give her opinion without knowing precisely what Mr. Kreindler has said or will testify regarding my letter to Mr. Tuerk.

Professor Gentile is an Associate Professor of Law at Fordham University School of Law. Among the subjects she teaches is Professional Responsibilty. Enclosed is a copy of her biography excerpted from the American Association of Law Schools Directory of Law Teachers. Among Professor Gentile's qualifications as a lawyer, she serves as Chairperson of the New York State Law Revision Commission, is a member of the New York City Board of Collective Bargaining, and was previously Special Counsel to The Seafarers International Union.

I appreciate your telephone advice today that the further hearing will be held on June 21 at 2:00, at which time Mr. Kreindler will be given the opportunity to testify in opposition to my nomination. As we discussed, I expect to request the opportunity to make a brief statement after he has testified, and to make myself available for questions from the Senators present. I will let you know definitely after I have seen Mr. Kreindler's letter, which you kindly stated you would send to me via overnight mail.

Again, my thanks for your courtesy and attention.

Respectfully,

Stuart A. Summit

SAS:dlj
Enclosures

Carolyn Gentile
Attorney at Law
140 W. 62 St.
New York, N.Y. 10023

CONFIDENTIAL

June 14, 1988

Stuart Summit, Esq.
Summit Rovins & Feldesman
445 Park Avenue
New York, N.Y. 10022

Dear Mr. Summit:

You have requested that I review your single communication of April 26, 1985 to Carl E. Tuerk, Jr., Esq. regarding the litigation then pending between your clients and the firm of Kreindler and Kriendler in order to determine if, in my professional opinion, your communication comports with the requirements of the Code of Professional Responsibility (hereinafter "Code"). In that connection, I have reviewed the Code, the Model Rules of Professional Conduct (hereinafter "M.R."), compilations of judicial decisions and ethical opinions, as well as the documents enclosed with your correspondence of June 3, 1988.

Any discussion of ethical requirements of necessity must be dependent upon the particular facts and circumstances involved. Thus, a brief statement of the facts surrounding this controversy which resulted in your communicating with Mr. Tuerk will be helpful. You have informed me that you were retained by the partners who withdrew from the firm of Kreindler and Kreindler and formed the firm of Levy, Phillips & Konigsberg. Subsequent to the withdrawal, a dispute arose over fees that had been earned during the partnership, but had not been received or disbursed as of the time of the withdrawal. When the remaining partners of the Kreindler firm made it clear that they did not intend to account to the withdrawing partners, an action was commenced in N.Y. Supreme Court for an accounting and a declaratory judgment as to the entitlement of the partners that withdrew to partnership assets. During the pendency of the action, your clients informed you that they had cause for concern that the partnership assets were being utilized by the ongoing firm, and therefore, these assets might not be available for distribution when the court ultimately decided upon their disposition. It was during this period that your clients asked you to respond to a request made by Mr. Tuerk of Cooper, Beckman and Tuerk for information concerning the controversy between your clients and the Kriendler firm. The firm of Cooper, Beckman and Tuerk had been Maryland co-counsel with the Kreindler firm prior to its "break-up" in certain asbestos cases then pending in Maryland. The professional association of the Kreindler firm with Cooper, Beckman and Tuerk began when Mr. Tuerk retained Stanley J. Levy, at the time a partner in the Kreindler firm, as trial counsel because of his reputation as an expert in asbestos cases.

An examination of the Code and the Rules reveals that the issues that are presented by the dissolution or termination of law firm partnerships are not specifically covered. Such a regulatory vacuum is understandable because law firm "break-ups" occurring with relative frequency are a recent phenomenon. Yet such a dissolution or termination creates many complex problems for the attorneys involved. For example, the responsibility to represent clients competently and diligently, D.R. 6-101(A)(3); M.R. 1.1, 1.3, is ongoing even though complicated by the disruptive effects of a dissolution. Moreover, even though there may be differences among the lawyers participating in the dissolution, the attorneys' duty of loyalty to the clients of the firm suggest that the best interest of the client outweighs other considerations. See D.R. 5-101(A); M.R. 1.7, Comments 3 and 5.

As the attorney for the withdrawing partners, your duty was to them, and you were obligated within the bounds of the Code to represent them diligently (M.R. 1.3) and zealously (Canon 7). From the information that was furnished to me, it appears that your clients advised you that co-counsel had sought a communication from you concerning the nature and existence of the dispute over fee disbursements that was pending, and your clients requested that you send such a communication to Mr. Tuerk in order to protect their interest in as yet uncollected partnership assets. Having been requested to transmit such a letter, and absent some ethical bar, it would have been difficult to refuse to accommodate their wishes while continuing to represent them. The content of your letter was devoted, in principal part, to providing a substantial amount of material about the ongoing dispute. It unequivocally identified your role as an advocate for Mr. Levy, et. al., explained your clients' position, and submitted the relevant documents for Mr. Tuerk's independent review and evaluation.

Your letter then refers to your clients' request that the fees that had accrued be made payable jointly to the disputing firms. The Code does not contain any section precisely on point that precludes such a request, nor am I aware of any ethics opinion that has considered the issue. The only provision of the Code that I have noted which is possibly relevant is D.R. 7-102(A)(1) which prohibits an attorney in the representation of a client from "asserting a position . . . on behalf of his client when he knows or when it is obvious that such action would serve merely to harass or maliciously injure another." The language of the Code provision makes clear that its violation is contingent upon the absence of a legitimate purpose, and the test contemplated is a subjective one that is dependent upon the facts of each case. See M.R. 3.1, Model Code Comparison. In this instance, absent evidence of bad faith, your letter was consistent with attempting to preserve your clients' interest in assets claimed both by them and the Kreindler firm. It is also significant that your letter left the ultimate determination of the proper procedure to follow to Mr. Tuerk who, as an attorney, was able to evaluate the pleadings in this matter and make judgments accordingly. See E.C. 7-11. A letter from Mr. Tuerk dated May 6, 1985 indicates that he decided to file an interpleader action in Maryland which fact lends substantial weight to the foregoing conclusions.[1]

Based upon the totality of the circumstances surrounding the issuance of the letter, its contents, and the identity of the recipient, in my opinion, your communication did not violate the the single provision of the New York Code that appears applicable which prohibits any attorney from taking an action during the course of representing a client that is intended soley to harass or injure another person.

Sincerely yours,

Carolyn Gentile

Carolyn Gentile

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[1] Moreover, Mr Tuerk's letter to both your clients and the Kreindler firm implies that he had also received communications from the Kreindler firm.

THE A.A.L.S. DIRECTORY OF LAW TEACHERS
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LIS, ANN J.,* (F) Assoc. Prof. Ind., Bloom- b. 1946. B.A., 1968, Case Western Res.; J.D., New York Univ. *Admitted* NY, 1972. Assoc., . Gottlieb, Steen & Hamilton, NYC, 1971-78; Econ. Dev. Div., Law Dep't, NYC, 1978-80; n't Prof., Ind., Bloomington, 1980-81; Assoc. since 1981. *Subjects:* Land Use; *Local Govern-* Municipal Finance, (S); Real Estate Transac- *Real Property. Member:* COIF. On lv., spring Michigan.

LMAN, SHELDON (M) Assoc. Prof. Cleve.- [illegible] b. 1946. A.B., 1967, Rutgers Coll.; J.D., Rutgers, Newark; LL.M., 1980, Harvard. *Ad-* NJ, 1973. NIMH Fellow in Anthropology, of Chicago, 1967-69. Att'y, Sidney Krieger, Newark, NJ, 1973-74; Att'y, Passaic Cty. Legal [illegible] Paterson, NJ, 1974-75; Att'y, NJ Public [illegible] Mental Health Advocacy, Trenton, 1975- *Subjects: Civil Procedure;* Contracts; *Evidence;* [illegible] *Psychiatry, (S);* Remedies.

[illegible] MARCIA R. (F) Prof. Wm. Mitchell. b. [illegible] A.B., 1965, Barnard Coll.; M.S., 1967, Ohio [illegible] J.D., 1974, Ind., Bloomington. Assoc. Ed., [illegible] *Admitted* IN, 1974; MN, 1980. Instr. of Bi- [illegible] Trinity Coll., DC, 1966-70; Vis. Lect., Ind., [illegible], 1974; Att'y, Off. Gen. Counsel, Envi- [illegible] Agency, 1974-75; Assoc. Prof., Minneso- [illegible]; Assoc. Prof., Wm. Mitchell, 1980-81; [illegible] 1981; Assoc. Dean, 1983-85. *Subjects:* [illegible] *Law; Environmental Law;* Real Es- [illegible] Transactions; *Real Property. Member:* Order of [illegible] Am. Ass'n for the Advmt. of Sci. Mem., [illegible] Com. on Nuclear Power Safety; Nat'l Res. [illegible] Com. on Appraisal of Soc. Consequences of [illegible] Noise Abatement; Mem., MN Pollution [illegible] Agency Bd., since 1984.

[illegible] WILLIAM J. (M) Clin. Prof. South- [illegible] 1950. B.S., 1972, New York Univ.; J.D., [illegible] LL.M., 1977, Georgetown. Yale L.J. *Ad-* [illegible] DC, 1975; CA, 1982. Adj. Prof., George- [illegible] 1977-79; Dep. Dir., PreHyman Legal Intern [illegible] 1977-79; Assoc., Baker & Fine, Cambridge, [illegible] 81; Ass't Clin. Prof., Southern Cal., 1981- [illegible] Clinical Prof., 1983-86; Clin. Prof., since [illegible] *Subjects:* Appellate Litigation, (S); *Criminal* [illegible] *Evidence; Prison Law (Federal Post Con-* [illegible] (S). Chpsn., Defense Counsel Compe- [illegible], Nat'l Legal Aid & Defenders Ass'n, [illegible] Ad Hoc. Com. on U.S. Sent. Comm., [illegible] 87; V.Chair, Defense Func. Com., ABA [illegible] Just., 1986-87.

[illegible] LOUIS B. (M) Assoc. Prof. Cleve.- [illegible] 1947. J.D., 1973, Suffolk; LL.M., 1974, [illegible] Univ. Staff, Suffolk U.L. Rev. *Admitted* [illegible] CT, 1977. Instr., New York Univ., 1974- [illegible] Bergman, Horowitz & Reynolds, P.C., [illegible] CT, 1976-78; Vis. Ass't Prof., Cleve- [illegible] 1978-80; Assoc. Prof., since 1980. *Sub-* [illegible] *Tax;* Deferred Compensation; *Es-* [illegible] *Federal Tax; Estate Planning;* Federal [illegible] Taxation.

GENTILE, CAROLYN (F) Assoc. Prof. Fordham. b. 1943. B.A., 1965, Barnard Coll.; J.D., 1968, New York Univ. Ed., N.Y.U. L. Rev. *Admitted* NY, 1968; DC, 1980. Law Clerk, Hon. James R. Browning, 9th Cir., San Fran., CA, 1968-69; Ass't Admin'r, NY Human Resources Admin., NYC, 1973-75; Spec. Counsel, Seafarers Int'l Union, NYC, 1975-86; Chair, NY Law Rev. Comm., Albany, since 1982; Assoc. Prof., Fordham, since 1986. *Subjects: Employee Benefit Plans, (S); Internal Union Affairs, (S); Labor Law; Professional Responsibility. Member:* Coif; Phi Beta Kappa. Mem., NYC Bd. of Collective Bargaining, since 1979; Consult., Bd. of Trustees, Pension, Health, Vac. Plans, since 1986.

GENTY, PHILIP M. (M) Writing Instr. Brooklyn. b. 1955. J.D., 1980, New York Univ. *Admitted* NY, 1981. Instr., Brooklyn, since 1987. *Subjects: Legal Research & Writing, (S).*

GEORGE, B. GLENN (F) Assoc. Prof. Wm. & Mary. b. 1953. B.A., 1975, Univ. of No. Car.; J.D., 1978, Harvard. *Admitted* CA, 1978; VA, 1987. Assoc. Att'y, Gibson, Dunn & Crutcher, L.A., CA, 1978-83; Ass't Prof., Wm. & Mary, 1983-86; Assoc. Prof., since 1986. *Subjects: Civil Procedure;* Employment Discrimination; *Labor Law;* Labor Law II; *Negotiations; Negotiations & Collective Bargaining, (S).*

GEORGE, B. JAMES JR. (M) Prof. New York L.S.. b. 1925. B.A., 1949; J.D., 1951, Michigan. Assoc. Ed., Mich. L. Rev. *Admitted* MO, 1951; MI, 1952; TX, 1978; NY, 1981. Ass't Prof., Michigan, 1952-55; Assoc. Prof., 1955-58; Prof., 1958-68; Assoc. Dir., PLI, NYC, 1968-71; Prof., Wayne State, 1971-77; Pres., Southwestern Legal Fdn., Richardson, TX, 1977-79; Prof., New York L. S., since 1980. *Subjects: Comparative Law, (S); Criminal Law; Criminal Procedure;* Domestic Relations; Evidence; International Law, (S). Michigan Criminal Procedure, 2d ed., 1980; Criminal Law: Cases, Readings & Materials (with Hall, Force), 1983. *Member:* ALI; Japanese-Am. Soc. for Legal Studies; Nihon Keiho Kyokai (hon.). Treas'r & Comm'r, Com. on Accred. for Corrections, 1979-84; Chrp., ABA Standing Com. on Ass'n Stands. for Crim. Just., 1979-85; Sect. Delegate, ABA Crim. Just. Sect., ABA House of Delegates, 1979-80.

GEORGE, LAWRENCE C. (M) Prof. Fla. State. b. 1937. LL.B., 1959, Yale. *Admitted* CA, 1960. Fellow in Law & Humanities, Harvard, 1975-76. Law Clerk, U.S.D.C. Central Dist. CA, 1959-60; Part., Zetterberg & George, Claremont, CA, 1963-70; Assoc. Prof., Fla. State, 1970-81; Prof., since 1981. *Subjects: Civil Procedure; Conflicts; Family Law;* Insurance; *Jurisprudence, (S).*

GEORGE, NORMAN (M) Prof. Dayton. b. 1927. B.A., 1950, Ohio State; M.B.A., 1954, Pittsburgh; Ph.D., 1962, Ohio State; J.D., 1967, No. Ky. S.C.-Chase. *Admitted* OH, 1967. Div. Mgr., Nat'l Mgt. Ass'n, Res. & Dev., Dayton, OH, 1952-62; Consult. (P/T), Corp. Counsel & Mgt. Consulting,

(Continued on next page)

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June 18, 1988

VIA FEDERAL EXPRESS

Hon. Joseph R. Biden, Jr., Chairman
U.S. Senate Committee on the Judiciary
Dirksen Senate Office Building
Room S-D 224
Washington, D.C. 20510

Attn: Steven J. Metalitz, Esq.
Chief Nominations Counsel

Dear Chairman Biden:

I write in response to a request from the Department of Justice that I give the Committee on the Judiciary my views regarding the nomination of Stuart Summit for appointment as a judge of the United States Court of Appeals for the Second Circuit. I believe Mr. Summit should be confirmed for the Second Circuit.

I have known Mr. Summit for approximately fifteen years in two separate contexts. First, we served together on a committee of the Association of the Bar of the City of New York. In that connection, Mr. Summit was active, thoughtful and hardworking.

My primary contact with Mr. Summit, however, has been as an adversary. I represented the eminent law firm of Kreindler & Kreindler in a lengthy, sometimes bitter, and hard-fought series of disputes that that firm and its partners had with a group of its partners who left Kreindler & Kreindler to form their own firm, Levy, Phillips &

Konigsberg. Mr. Summit represented Levy, Phillips & Konigsberg and its partners. For a period of well over a year Mr. Summit and I squared off against each other on virtually a daily basis. We appeared in court scores of times, wrote or supervised the writing of numerous briefs, and contested and negotiated dozens of different aspects of the dispute. The dispute was eventually settled after the filing of two significant and several subsidiary litigations, an interlocutory appeal and a six-week trial. I believe I came to know Mr. Summit's legal skills and personality well during that time.

I have been informed, both by Mr. Metalitz of your staff and the Department of Justice, that the Judiciary Committee is focusing on one particular aspect of that litigation: the attempt by Levy, Phillips & Konigsberg to stop Kreindler & Kreindler clients and others from paying Kreindler & Kreindler the legal fees which were due it unless Levy, Phillips & Konigsberg's name was added to the checks. I believed at the time -- and still believe -- that such a tactic was not supported by the law, and I so informed my clients. Our position was upheld by a judge of the New York Supreme Court, who issued a preliminary injunction prohibiting Levy, Phillips & Konigsberg from continuing to impede the receipt by Kreindler & Kreindler of its fees.

During the course of Mr. Summit's testimony before the Judiciary Committee, he testified that he had advised his clients that he believed that it was improper for them to attempt to stop Kreindler & Kreindler's fees and that they would most likely lose any court test of their actions. I was pleased to learn that he had urged his clients not to pursue that counter-productive approach to resolving the dispute. Even though his clients disagreed with him, he quite properly as an advocate continued to represent his clients' interests effectively and argue their cause before the court.

As members of the litigation bar, we do not always have the luxury of having clients who agree with us. This is especially true when the clients themselves are all knowledgeable, able and forceful trial attorneys who form their own opinions about what is proper and what is not. Nonetheless, it is an important element of the American legal system that lawyers such as Mr. Summit are able to -- indeed, obligated to -- continue to advocate their clients' positions by all legitimate means within the court system, even if the lawyer disagrees with the means -- or even the aims -- of the client.

In this case, I believe the record shows that Mr. Summit urged his clients not to stop Kreindler & Kreindler from receiving its fees, but they rejected his advice. It was proper for him, as an attorney and skilled advocate, to attempt to convince the court that his clients were entitled to continue their course of action.

Stuart Summit is an able, aggressive advocate. He represents his clients effectively, and, in my opinion, is qualified to sit on the Second Circuit. He should be approved by this Committee.

Very truly yours,

Sidney H. Stein

SHS/mlg

Sidney H. Stein

cc: Ms. Carey Weil [Federal Express]
U.S. Dept. of Justice
Office of Legislative Affairs
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June 20, 1988

VIA FAX

Lee S. Kreindler, Esq.
Kreindler & Kreindler
100 Park Avenue
New York, New York 10017

Re: Stuart Summit

Dear Lee:

I have just finished reading Sid Stein's letter to the Senate Judicary Committee. I suppose I could say I was shocked by his whole-hearted endorsement of Stu Summit, although after practicing law and trying cases for thirty-eight years I may be beyond shock.

As I have told you, I have been contacted twice, once by the FBI. I had no hesitancy in stating that Stu Summitt should pass an FBI check, but when I was contacted by Mr. Metalitz concerning Summit's qualifications to sit on the Second Circuit I was quite candid with him.

My concern is this. A Circuit Court Judge is not simply a prestigious position. It is one that requires an intelligent, sensitive, experienced lawyer. Stu Summit might be a nice guy to have a drink with, sit on a committee with or chat about settlements, but he simply does not fill the bill in my judgment when it comes to being a Circuit Court Judge.

I have known and represented judges in our state courts and represented one of our Ninth Circuit Judges for years, so I do know these people.

In my experience with Stu Summit I found him to be a very shakey trial lawyer who got better as the trial progressed, but certainly would not make my top ten of opponents.

I thought he was pursuing the wrong theory in his lawsuit, and to take on the burden of proving an agreement was not binding that had been signed over and over again by his clients struck me as slightly ridiculous. The fact that he exerted economic pressure on you was of course something you had put an end to with a preliminary injunction before I entered the case, but that it was a pattern that was successful when used against Barry Houston, I learned from Mr. Houston. The fact that it was used was again in my judgment unethical. I suppose I have been around long enough to know that this kind of thing occurs from time to time, but not by people who are candidates for a Judgeship just one step below our United States Supreme Court.

Finally I should say I bear Stu Summit no ill will, I hope there is no tone of acrimony in my opinion. But unlike our colleage Sid Stein I do not believe that Stuart Summit should be a Judge, much less a Second Circuit Judge.

With kind personal regards, I remain

Very truly yours,

Wm. Marshall Morgan

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WRITER'S
DIRECT DIAL NUMBER

(212) 702-2229

May 20, 1988

FEDERAL EXPRESS

United States Senate Committee
  on the Judiciary
Room SD224
Dirkson Senate Office Building
Washington, D.C. 20510

Attention: Hon. Steven J. Metalitz, Chief Nominations Counsel

Re: Nomination of Stuart A. Summit as United States Court of Appeals Judge for the Second Circuit

Honorable Senators:

Since the May 17, 1988 Manhattan Lawyer front-page article concerning Stuart A. Summit's nomination must have been brought to your attention -- and since that article refers extensively to a matter in which I, not Mr. Summit, litigated -- I feel compelled to write this letter. Also, I believe that DR 8-102 of the Code of Professional Responsibility, governing members of the New York bar, obligates me to do so.

Moreover, as a person whose commitment to the improvement of our judiciary, in general, and the merit selection of judges, in particular, is well-known in our state, I feel that it is important that this response be provided.

So that you may appreciate my background and commitment to a judiciary of highest quality, I offer the following abbreviated curriculum vitae:

1972-1980	Law Clerk to Justice Bentley Kassal, a highly-respected Justice of the New York State Supreme Court, presently sitting in the Appellate Division.
1984-Present	Member of the Committee on Character and Fitness of Applicants for Admission to the New York State Bar of the Appellate Division of the Supreme Court of the State of New York, First Department.
1982-Present	Assistant Counsel to the State of New York Commission on Judicial Nomination, the constitutional body which nominates candidates for New York State's highest appellate court.
1985-Present	Chair (Member since 1982) of the Advisory Council to the Housing Part of the Civil Court of the City of New York, the body created by the Judiciary Law of the State of New York to review the qualifications of and nominate Housing Court Judges.
1981-1984	Member of the Civil Court Committee of the Association of the Bar of the City of New York ("A.B.C.N.Y.").
1985-Present	Member of the Committee on the Judiciary of the A.B.C.N.Y.
1988-Present	Member of the Committee on State Courts of Superior Jurisdiction of the A.B.C.N.Y.
1985-Present	Alternate Member of the Council on Judicial Administration of the A.B.C.N.Y.
1988-Present	Member of the Committee to Encourage Judicial Service of the A.B.C.N.Y.
1986, 1988	Lecturer on Becoming a Judge in New York.

1988 Panel Member, New York State Conference on Improving Judicial Selection.

I have also served as chair, executive committee member and similar positions of other sections and committees of the New York State Bar Association.

Finally, I feel compelled to write as a life-long member of the Democratic Party, from a family of life-long members of the Democratic Party, who have actively participated in the affairs of the party on a national, state and local level, both in New York State and elsewhere. I mention this fact because I see the present publicity surrounding Mr. Summit's nomination, at least in part, to be the result of a general reaction to the candidates who have been nominated by Senator Alphonse D'Amato and by the present Administration.

With this background, I wish to advise you of the following facts relevant to the Arenstein v. Huston matter discussed in the Manhattan Lawyer article. In 1984, I was first consulted by Robert D. Arenstein, who, since 1980, had practiced law with Barry S. Huston in a professional corporation known as Arenstein & Huston, P.C. Mr. Arenstein consulted me because Mr. Huston's attorney had written a letter to him stating that Mr. Huston wished to dissolve the professional corporation and suggesting that Mr. Arenstein retain an attorney to discuss that matter. Mr. Arenstein was referred to me by an attorney who was aware that I had previously handled a similar matter, with respect to another law firm, where we had very expeditiously, inexpensively and amicably resolved the matter.

Over the next several months, I attempted to settle the Arenstein & Huston, P.C. matter on an amicable basis. During that period, I advised my client to waive and surrender certain clear rights to which he was entitled under the parties' Shareholders' Agreement in order to reach an amicable resolution. Mr. Huston, on the other hand, offered to give up nothing. Each time we made an offer, Mr. Huston demanded more and withdrew prior commitments, on his part, which were essential to the proposed arrangement.

Mr. Huston maintains a negligence practice in which matters are handled on a contingent fee basis with payments received primarily from insurance carriers. In December 1984, my client learned, for the first time, that Mr. Huston had taken checks payable to their law firm, Arenstein & Huston, P.C., had endorsed them to his personal order and deposited them in accounts maintained in his individual name rather than in the accounts of Arenstein & Huston, P.C. As a result, we commenced litigation and sought and obtained a temporary restraining order enjoining and restraining Mr. Huston from cashing or depositing into a checking account other than that of Arenstein & Huston, P.C., any check made payable to Arenstein & Huston, P.C.

Mr. Huston then moved to compel arbitration, which we did not oppose, but as to which we merely requested a prompt resolution. The court issued a decision and order confirming the continued existence of the professional corporation and holding that arbitration was required in accordance with the terms of the Shareholders' Agreement. Accordingly, the court vacated the prior restraining order and directed that the matter proceed to arbitration where the arbitrator could make any appropriate determinations. Thereafter, we filed a demand for arbitration and Mr. Huston's attorney filed a cross-demand for arbitration.

Before a date for the arbitration hearing was established, my client learned that Mr. Huston had communicated with attorneys representing defendants in the firm's negligence actions and had unilaterally executed documents, purportedly on behalf of Arenstein & Huston, P.C., substituting himself, individually, as attorney for the firm's clients and requesting that all further papers (and all settlement checks) be sent to him, individually. In response to this, I issued a series of letters described by Mr. Huston, in the Manhattan Lawyer article, as "freeze letters". Enclosed, for your review, is a copy of one such letter with the name of the addressee eliminated.

Contrary to the suggestions made in the article, I believe those letters to have been wholly proper, necessitated by the unilateral actions taken by Mr. Huston.

The letters merely advised those to whom they were addressed that Arenstein & Huston, P.C. continued to exist and that, pursuant to the Shareholders' Agreement and By-laws, Mr. Arenstein and Mr. Huston shared equal control of the firm. The letters stated that neither Mr. Arenstein nor Mr. Huston "may take unilateral action contrary to the interests of the other or the firm. . . . [N]either may substitute himself or another attorney as attorney of record in pending matters . . ., without the consent of both Messrs. Arenstein and Huston." The letter requested that all settlement payments be made to Arenstein & Huston, P.C., Robert D. Arenstein and Barry S. Huston, as attorneys. I did this in order to avoid the possibility of Mr. Huston unilaterally endorsing and depositing the funds into his individual accounts.

Once the arbitration had been commenced, the arbitrator issued an interim award, on the record, in which he directed that:

> Mr. Huston will set up a special attorney's account by the title of Barry S. Huston, special escrow account . . . Mr. Huston must make deposits into that account of all settlement checks received from a list of accounts which will be supplied to him . . . by Mr. Rosenberg, which list will constitute a list of addressees of letters that Mr. Rosenberg sent out. . . which I have referred to . . . as the "freeze letters." The bank account will provide that I [the arbitrator] and I alone will be the signatory for all withdrawals. Mr. Huston will sign a letter to that effect.
>
> Mr. Huston agrees that any failure to deposit the check into that account, when received, or any diversion of those checks will constitute a criminal conversion.

On May 1, 1985, the arbitrator issued his award in which he denied Mr. Huston's claims of breach of the Shareholders' Agreement by my client and denied to Mr. Huston the compensatory and exemplary damages which he sought in the arbitration. He also denied Mr. Huston's claim that Mr. Arenstein should not receive one-third of the fees paid on all negligence cases maintained by Arenstein & Huston, P.C. Finally, the arbitrator directed dissolution of Arenstein & Huston, P.C. in accordance with the terms of the Shareholders' Agreement.

Contrary to Mr. Huston's claim in the Manhattan Lawyer article, the suit to dissolve the law firm was not settled by the arbitrator. Rather, my client won the arbitration.

After the issuance of the arbitrator's award, my client became particularly concerned that a very large settlement check had not been deposited into the special checking account established by the arbitrator. Accordingly, I wrote to Mr. Huston's attorney requesting that he confirm his representation that settlement checks immediately would be placed in the special checking account. The letter was countersigned and returned to me. Thereafter, the arbitrator issued a modification of his order providing for the turnover of the special escrow account to a new account in the name of a receiver to be appointed in the State Supreme Court.

On June 11, 1985, it was learned that Mr. Huston had violated the arbitrator's direction, and his attorney's representation, and had deposited two settlement checks, totalling $450,000, in a special checking account (not the one established by the arbitrator) in his individual name. We obtained an order from the Supreme Court preventing the transfer of those funds and simultaneously moved to confirm the arbitrator's award and for the appointment of a receiver for Arenstein & Huston, P.C. The relief we requested was granted and, to this date, a receiver remains in place, with the matter continuing to be litigated in the Supreme Court of the State of New York.

I do not wish to burden you with a description of all of the further events which have transpired in that litigation. However, Mr. Huston's claim, in the Manhattan Lawyer article, that the "freeze letters" drove him into bankruptcy could not be further from the truth. The "freeze letters" were issued on February 22, 1985 and withdrawn, after the establishment of the arbitrator's bank account, by letters dated on or about April 8, 1985.

Eight months later, in December 1985, Mr. Huston filed a petition under Chapter 11 of the Bankruptcy Code and simultaneously filed a complaint in an adversary proceeding against Mr. Arenstein and against the court-appointed temporary receiver. When the matter first came on for hearing before Bankruptcy Judge Prudence B. Abram, she advised Mr. Huston and his attorney that she did not intend to satisfy his desire that she sit as an appellate judge to permit him to relitigate all of the issues which had been raised in the arbitration and in the action in the Supreme Court of the State of New York and suggested, most forcefully, that Mr. Huston move to dismiss his proceeding. In January 1986, less than a month after he had filed his petition in bankruptcy, Mr. Huston moved to dismiss his petition, which was granted by an order dated February 20, 1986. From the foregoing, it should be clear that Mr. Huston was not "forced" into bankruptcy. Rather, he unsuccessfully sought to use the Bankruptcy Court as a forum to end-run the New York State Supreme Court, where he had failed to prevail.

As observed by the arbitrator and many of the judges before whom this litigation has appeared, a law firm dissolution -- especially dissolution of a law firm in which there are only two principal attorneys -- is much like a divorce, but with even greater acrimony. Moreover, because the parties are lawyers -- Mr. Huston is an experienced negligence attorney -- the problem often is even more exacerbated.

Having failed to succeed in the New York State Supreme Court, the United States Bankruptcy Court and in the arbitration conducted by the American Arbitration Association, Mr. Huston has continued to lash out in every way he can. Not content with fighting his own battle, he caused his secretary to commence a frivolous assault action againt my client. He, himself, commenced an equally frivolous $100 million law suit against my client, myself and this law firm.

I have litigated the Arenstein & Huston, P.C. matter for the last four years. Due to my desire to minimize my client's expenses, I have not burdened any other attorney in this firm with this matter, except on rare occasions when I have asked a colleague to make an appearance when I was otherwise unavailable.

Never during the course of this litigation have I consulted or sought Mr. Summit's opinion as to this matter.

Throughout this litigation, Mr. Huston has threatened to see to it that my client never received the money rightfully due to him. Unfortunately, he has succeeded in delaying some of those payments.

Mr. Huston also has threatened to "destroy" his former partner and to "destroy" me. Virtually every time we have met, he has reviled my client and myself with epithets which, at best, can be politely described as "gutter language."

Apparently, Mr. Huston's vindictiveness knows no bounds. In his desire to seek retribution against me for having successfully represented his former partner, he has now attacked my partner, Mr. Summit. For this, I am understandably chagrined.

I hope that your committee will give due consideration to the source of the statements when evaluating any statements you received from Mr. Huston. Should you desire any further information, or should you desire that the contents of this letter be placed before you in a form under oath subject to penalties of perjury, I shall be pleased to do so.

My representation of my client in this dispute has been wholly proper. Even were it not, it would be unfair to permit it to influence your consideration of the nomination of Stuart A. Summit, who had absolutely no involvement in this case.

As I noted in the beginning of this letter, I have had considerable experience in merit selection of judges at all levels within the New York State court system. The criteria which has been employed consistently by the bodies with which I have been associated has included the following:

1. General intellectual ability.

2. Broad knowledge of the law.

3. Unquestioned integrity.

4. Judicial demeanor and, in the case of appellate judges, ability to perform in a collegial setting.

5. Desire to perform public service and, specifically, judicial service.

Based upon each of these criteria, and based upon my personal experience, over my seven-year association with Stuart A. Summit, he has my unqualified endorsement.

When I first heard of Mr. Summit's nomination, my reaction was twofold. Of course, selfishly, I did not wish to lose him as an extremely valued member of this firm. This was overridden by my belief that he was a perfect candidate for the United States Court of Appeals.

Stuart A. Summit is a man of extraordinary ability, both in an intellectual and a practical sense. His experience and training as a litigator is more extensive than virtually any candidate whom I have interviewed for judicial office. The respect and reputation which he enjoys in the New York legal community, and beyond, is of the highest order. His temperament and ability to deal with others makes him a perfect candidate for the highly-respected appellate court for which he has been nominated. In all other respects, he is a perfect candidate for this position, as has been confirmed to me by everyone with whom I have spoken about the subject.

It has been an extraordinary experience to have worked with Stuart A. Summit and to have been his partner for the past seven years.

I hope that you will strongly recommend his nomination to the full Senate and that the Senate will confirm that nomination, without delay, so that we may all, in the future, benefit from his services on the United States Court of Appeals for the Second Circuit.

Respectfully submitted,

David Rosenberg
David Rosenberg

DR:vh
Enclosure

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WRITER'S
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(212) 702-22

April 8, 1985

Re: Arenstein & Huston, P.C.

Gentlemen:

Reference is made to my letter dated February 22, 1985, a copy of which is enclosed.

Please be advised that my prior letter is hereby withdrawn and is of no further force or effect.

Under the circumstances, you are hereby authorized, for all purposes, to deal directly with the attorney now of record in any matter wherein Arenstein & Huston, P.C. appeared as attorneys for plaintiff.

Thank you for your assistance.

Very truly yours,

David Rosenberg

DR:vh
Enc.

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February 22, 1985

Re: Arenstein & Huston, P.C.

Gentlemen:

This firm represents Robert D. Arenstein, Esq., in litigation with Barry S. Huston, Esq., the other shareholder of Arenstein & Huston, P.C.

We are advised that Arenstein & Huston, P.C. has appeared as attorneys for plaintiffs in lawsuits in which you represent one or more defendants.

The Supreme Court, New York County has recently held that Arenstein & Huston, P.C. and the shareholders agreement between Messrs. Arenstein and Huston remain extant. Pursuant to the shareholders agreement and the by-laws of Arenstein & Huston, P.C., Messrs. Arenstein and Huston share equal control of their firm.

Under the circumstances, neither Mr. Huston nor Mr. Arenstein may take unilateral action contrary to the interests of the other or the firm. Specifically, neither may substitute himself or another attorney as attorney of record in pending matters in which Arenstein & Huston, P.C. has appeared, without the consent of both Messrs. Arenstein and Huston.

Moreover, until the disputes between Messrs. Arenstein and Huston are resolved, neither is authorized to accept settlement monies on behalf of any firm client unless those monies are paid to both of them. Accordingly, checks should be made payable to Arenstein & Huston, P.C., Robert D. Arenstein and Barry S. Huston, as attorneys.

Please advise the undersigned immediately of any action taken by Mr. Huston in cases involving Arenstein & Huston, P.C. which is contrary to the foregoing. In addition, this letter should be brought to the attention of the individual attorneys and claims adjusters handling matters in which the plaintiff is represented by Arenstein & Huston, P.C.

Very truly yours,

David Rosenberg

DR/dld

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*ALSO MEMBER OF
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June 16, 1988

VIA FEDERAL EXPRESS

United States Senate
Committee on the Judiciary
Room SD224
Dirksen Senate Office Building
Washington, D.C. 20510

Att: Steven J. Metalitz, Esq.
Chief Nominations Counsel

Re: Nomination of Stuart A. Summit to the United States Court of Appeals for the Second Circuit

Dear Mr. Metalitz:

This letter is in response to the letter of David Rosenberg, Esq., of May 20, 1988, to the Committee with respect to the pending nomination of his partner, Stuart A. Summit, Esq., to the United States Court of Appeals for the Second Circuit. I shall reply as briefly as possible, including exhibits which contradict his letter.

Firstly, I am aware of a partner in the firm of Summit, Rovins & Feldesman who has had knowledge and involvement in both the litigation involving my former firm, and the litigation involving the firm of Kreindler & Kreindler. I attended a portion of the trial before Justice Michael J. Dontzin in the Supreme Court, New York County, in the Spring of 1986, involving the Kreindler & Kreindler firm. At that time, Mr. Summit was lead counsel for the defecting partners, and his second-in-command was John Amabile, Esq., a partner in the firm, who had assisted Mr. Summit in the presentation of testimony and evidence in that case. Since that case proceeded for six weeks prior to a settlement agreement being consummated, there is no doubt that Mr. Amabile was intimately involved with and knew all aspects of that case.

Mr. Amabile also had knowledge of and was involved in the litigation involving the dissolution of my former firm of Arenstein & Huston, P.C. In my pending lawsuit against Mr. Rosenberg and his firm, the defendants sought to have the Complaint dismissed by reason of late service, but that issue was recently determined against them after two days of hearings by Special Referee Eugene J. Sullivan in a decision dated May 10, 1988 (copy enclosed). What is significant about this "frivolous lawsuit," as Mr. Rosenberg has described it, is that during the course of the hearings John Amabile was identified by both Mr. Rosenberg and an associate of the firm, Gerard Riso, Esq., as a partner who supervised them with respect to the Huston litigation. (Copies of the pertinent pages of the transcript of the hearings of September 16, 1987, and December 7, 1987, are enclosed.)

It is inconceivable to me as a trial attorney how a law firm that has approximately twenty-five attorneys in the litigation department can simultaneously handle two cases, i.e. the Huston litigation and the Kreindler litigation, involving the same or similar issues of dispute, during the same period of time, without there being any interchange and communication amongst the partners, to wit: Mr. Summit, Mr. Amabile and Mr. Rosenberg concerning tactics and strategy in handling the cases. The position taken by Mr. Rosenberg that he may not have spoken to Mr. Summit concerning my litigation may be true, but there is no doubt that he spoke to Mr. Amabile concerning it, and it is not credible that Mr. Amabile would not discuss the Huston litigation with Mr. Summit, since it was so similar to the Kreindler litigation.

Mr. Rosenberg recites a history of the Huston litigation which is replete with inaccuracies. He did not attempt to settle the matter on an amicable basis, but rather the parties and their attorneys entered into an informal agreement concerning a distribution of fees on the negligence cases pending ratification by a written agreement. Mr. Rosenberg drafted a number of settlement agreements, as indicated by the copies of the draft agreements and covering letter of October 16, 1984 (copies enclosed), but these agreements were never executed due to the fact that when Mr. Arenstein returned from China on October 29, 1984, he unilaterally decided that the agreement was unacceptable, and he chose to renege on the entire settlement.

Mr. Rosenberg states on page 3 of his letter that in December, 1984 his client had learned for the first time that checks which had been payable to the firm of Arenstein & Huston, P.C. were now being endorsed by me and put through my special account. I am enclosing a series of checks drawn on my then special account indicating that as early as October 5, 1984, Mr. Arenstein had accepted settlement funds pursuant to the informal agreement. Mr. Rosenberg would have you believe that in December, 1984 his client learned of this practice with respect to fees on negligence cases that were being handled from August through December 1984, however, the checks which had been endorsed and deposited to Mr.Arenstein's account indicate that he had received approximately $24,000.00 during that period of time, while concurrently, Mr. Arenstein never paid one penny to me on cases he was then handling.

Mr. Rosenberg brought a lawsuit on behalf of his client against me in December, 1984, seeking a temporary injunction pending the outcome of the case. Justice Bruce McM. Wright decided the motion for a temporary injunction adverse to Mr. Rosenberg and his client, and granted my motion to compel arbitration. The decision and order of Justice Wright (copy enclosed) is illustrative for the point that Justice Wright stated that the only portion of the Shareholder's Agreement that was "extant" was the provision requiring an arbitration of all issues. In addition, the decision and order of Justice Wright denied in its entirety all of Mr. Arenstein's demands for relief and indicated that he may not have even been entitled to one-third of the fees generated on negligence cases.

Since things were not going well for Mr. Rosenberg and his client in the Courthouse, he chose to send a series of freeze letters between February 22, 1985, and March 1, 1985, completely misstating and misinforming the recipients of the decision and order of Justice Wright. In fact, Mr. Rosenberg chose not to include a copy of Justice Wright's decision and order, just in the event that someone may have questioned the interpretation he had given to the decision and order. Simultaneously with the sending of the "freeze letters", Mr. Rosenberg sought intervention by the Appellate Division, First Department, for an injunction pending appeal on March 4, 1985. (Copies of this motion are enclosed.) While Mr. Rosenberg was able to obtain an ex parte stay on March 4, 1985, this stay was vacated on March 8, 1985, and the motion was denied on March 28, 1985, by decision and order of a full bench of the Appellate Division, First Department (copy enclosed). One can only wonder why Mr. Rosenberg sent the "freeze letters," since he was litigating the case through the courts, unless he knew that his position had no merit, and was intended to harm me as opposed to seeking relief for his client. The effect of these letters was to essentially freeze my practice at a standstill, because once defense counsel and insurance carriers were notified of the dispute, they were given every reasonable excuse not to make payments on cases.

Mr. Rosenberg's assertion that I somehow violated the special attorney's escrow account is totally fallacious, since it was Mr. Rosenberg who chose to violate the agreement with the arbitrator concerning a distribution of legal fees by writing to him on June 4, 1985, requesting that no further payments be made to me on any of the cases until there was a resolution of claimed outstanding amounts due Mr. Arenstein for the period of time when he was accepting 26% of the legal fees to the time the arbitrator awarded him 33-1/3% of the legal fees. Upon receipt of Mr. Rosenberg's letter, the arbitrator, Stewart C. Goldberg, Esq., washed his hands of the entire matter and indicated that the temporary account was to terminate upon issuance of a final award, and contrary to Mr. Rosenberg's assertion, my attorney stated that we would abide by the terms of that special checking account for so long as same was in existence. Once Mr. Goldberg chose to renounce the agreement on June 6, 1985, whereby he acted as a disburser of funds, there was no agreement for us to abide by.

Once the arbitrator was no longer in a position to disburse funds, and the only outstanding orders on the case were Justice Wright's order of January 11, 1985, and the Appellate Division, First Department order of March 28, 1985, since the arbitrator's award of May 1, 1985, had not been reduced to order and judgment, and even if done so, would not have affected the payment of legal fees pursuant to a two-thirds/one-third split as ordered by the arbitrator, I deposited funds into my special account for distribution to the clients, myself and Mr. Arenstein. In fact, Mr. Rosenberg had an appointment at my attorney's office on June 12, 1985, for the purpose of picking up in excess of $50,000.00 payable to his client from the proceeds of the settlement of $450,000.00 referred to by Mr. Rosenberg. However, Mr. Rosenberg cancelled the appointment approximately a half-hour before his scheduled arrival, and we later learned that he was in the Supreme Court, New York County, having an order to show cause signed seeking another injunction.

With respect to the Chapter 11 bankruptcy petition filed by me in November 1985, this was necessitated by reason of the fact that the receiver was holding up payments pursuant to an interim order of Justice Harold Baer, Jr., dated September 18, 1985, by reason of the failure of Mr. Arenstein to account to the receiver for cases he was handling. Mr. Rosenberg's letter of November 26, 1985, sent to the receiver, a copy of which is enclosed, indicates that he received Mr. Arenstein's accounting on November 1, 1985, "but it became lost in the spate of correspondence which has been exchanged since that date." Contrary to Mr. Rosenberg's assertion, I was not attempting to perform an end-run around the New York State Supreme Court, but rather was attempting to obtain the fees which the receiver had been holding since July 1985, and had only made limited distributions of between the period September 18, 1985, through October 1, 1985. It is specifically as a result of Mr. Rosenberg's failure to supply the accounting to the receiver until November 26, 1985, that I was forced to file a Chapter 11 petition.

Once Bankruptcy Judge Prudence B. Abram determined that she would not grant the turnover motion, the proceedings were remanded to state court, where Justice Baer issued an order on January 14, 1986, authorizing the payment of almost $80,000.00 to me. Once that was accomplished, I moved to discontinue the Chapter 11 proceeding, but Mr. Rosenberg chose to seek FRCP Rule 11 sanctions. Mr. Rosenberg's application for Rule 11 sanctions was denied in its entirety by Bankruptcy Judge Abram, and she furthermore indicated on the record that I had every legal right to file a Chapter 11 petition under the circumstances that were existing through the fall of 1985, and that the Chapter 11 and adversary proceedings were not frivolous. A copy of Judge Abram's decision read into the record is enclosed.

Mr. Rosenberg's characterizations of my conduct on page 7 of his letter can only be described as "sour grapes." He refers to an assault action against Mr. Arenstein brought by my former secretary, which he claims to be frivolous. However, he fails to point out to the Committee that the action is still pending against Mr. Arenstein, and if it was so frivolous, why has he not sought its dismissal? The $100,000,000 lawsuit pending against Mr. Rosenberg, his client and his firm is, as Mr. Rosenberg chooses to use the word, "extant," and one need only to read the Complaint to appreciate the manner in which his firm conducts litigation.

Finally, I have not attacked Mr. Summit. What I have done is provide the Judiciary Committee with relevant facts and exhibits which they might consider with respect to his nomination. I think it is wholly relevant for the Committee to know of pending litigation against Mr. Summit's firm, the manner in which some of his partners and associates conduct litigation, and the fact that their tactics are, to say the least, unsavory, and that such conduct may cast doubt as to the character and fitness of Mr. Summit to sit as a Judge of the United States Court of Appeals for the Second Circuit.

Thank you once again for your consideration of my position with respect to this nomination. If you require any further information, please do not hesitate to contact me.

Respectfully submitted,

BARRY S. HUSTON

BSH/djc

Enclosures

Senator Simon. Mr. Kreindler, you have a statement regarding the nominee, Mr. Stuart A. Summit, I understand. Is that correct?

STATEMENT OF LEE S. KREINDLER, NEW YORK, NY

Mr. Kreindler. That's correct.

Senator Simon. We will enter the full statement in the record, if you could confine yourself to roughly 5 minutes in the statement.

Mr. Kreindler. Well, if I'm to do that, Senator Simon, I think it would be best to not attempt to read the statement at all, but I understand the entire statement will be entered into the record.

Senator Simon. It will be entered into the record, that is correct.

Mr. Kreindler. Senator Simon, Senator Specter, and members of the committee, I'm here at the invitation of you, Senator Simon, and that followed a number of conversations I've had with Mr. Metalitz of your staff and the writing of a couple of letters that he requested.

My statement and the letters relate to litigation in which I was a party, and my experience in that litigation was such that I'm sorry to say that I've come to the conclusion that the nominee, Mr. Summit, by virtue of his attitude toward the law, as I observed it, his disrespect for the law, as I experienced it, is not, in my judgment, fit to be a judge.

This is not the most pleasant task that I have had to perform. I thought long and hard about going public on this issue. I finally concluded that I have a responsibility to say what I feel and what I think, and say it to this committee, and that's why I'm here.

In brief, my experience with Mr. Summit arises from an experience about 3 years ago when five partners in my law firm, two of whom had recently been admitted to partnership, left our firm, retired from our firm.

We had a longstanding partnership agreement. It had been drawn up some 20 years before, more than 20 years before, by one of our great firms, the Paul, Weiss, Rifkind firm.

It had been relied on by all of the partners, myself included, Mr. Levy included; I see that he is here today. It had been relied on constantly; it had been followed. It had been signed and resigned every time a partner was added to the firm or left the firm. Mr. Levy, for example, who is here today, had signed it six times over the years, and the partners who retired from our firm collectively had signed it on 16 occasions.

These partners resigned from the firm, which is, of course, their right. Prior to leaving the firm, they hired Mr. Summit, and Mr. Summit's role was chief lawyer for my departed partners, Messrs. Levy, Phillips, Konigsberg, Rubin and Marlin.

Mr. Summit attempted to break the partnership agreement. His clients took the position under his leadership that the agreement was unenforceable and voidable. I can say what I feel, and I've always felt that the argument was made out of whole cloth; it was totally devoid of merit, totally.

The partners left the firm at a time of great financial stress. Most of our—much of our practice is in aviation, my own particular field, but a large part of it had been in the handling of multiple asbestos cases on the plaintiff's side, and with the Johns-Manville bankruptcy, the asbestos pipeline was shut off.

About a third of our resources were devoted to asbestos, a third of our staff, paralegals, computers, and on and on and on. And for a period of years, we maintained that one-third of our expense load and overhead at a time when——

Senator SPECTER. Why did they say the agreement was void? What was the legal basis for the assertion?

Mr. KREINDLER. There were a number of bases, Senator Specter. The principal one was that it had been abandoned by course of conduct; that was the principal one.

Senator SPECTER. What did Mr. Summit do that leads you to oppose his nomination?

Mr. KREINDLER. Shortly after they left the firm, letters were sent out by Mr. Levy to virtually everyone who owned the firm any money or would owe the firm any money. We're in the plaintiff's practice, and letters went out to insurance companies with whom we had cases, defense law firms who were going to pay on settlements, forwarding lawyers, and others. The letters said the firm, Kreindler and Kreindler, is in dissolution.

Now, let me step back for a minute to say that the partnership agreement provided that upon a partner retiring, the firm will not go into dissolution. It will have a continuing existence, and the retiring partners had certain very generous but specific rights.

The letters went out——

Senator SPECTER. I am not familiar with the details. The Chairman has given you 5 minutes, and what I would seek to do is to try to get to the gravamen of what it is that you wish us to consider.

Mr. KREINDLER. Yes, sir.

Senator SPECTER. Your contention, I take it, is that there was some improper conduct involved here which was——

Mr. KREINDLER. Yes, yes.

Senator SPECTER [continuing]. Unethical and which renders Mr. Summit an inappropriate candidate for a Federal judgeship.

Mr. KREINDLER. Yes. An effort——

Senator SPECTER. What did he do? Can you tell us the nub of it?

Mr. KREINDLER. An effort was made to coerce us into submission by taking advantage of the financial problems of the firm and cutting off our cash flow. When the letters went out—and most of the letters were signed by Mr. Levy, but one letter which has already been entered into the record and is attached to my statement was signed by Mr. Summit himself.

The letters said that the firm is in dissolution; the Levy partners have an interest in all of the fees; do not pay any money to Kreindler and Kreindler without putting the names of the Levy partners on the checks. It was an effort to squelch our cash flow.

We immediately went into court for a preliminary injunction. We started an action for damages and an injunction. That injunction was granted, Senator Specter, and the opinion of Judge Myers is already in this record, but has been attached.

The conduct of sending out the letters was improper, and admittedly so by Mr. Summit. Mr. Summit was questioned about this at the earlier hearing and he said that he advised his clients that it was wrong to send out the letters. He says it was their idea.

He says he advised his clients that it was wrong to send out the letters, that it was not legal, and that it would be, in all probability, enjoined by the court. His clients sent out the letters anyway.

When Senator Leahy said, well, didn't you send out letters, he testified he had not, and he was shown his letter to Carl Tuerk, dated, I think, in late April. It's Exhibit C. And he recalled then that he had sent it out and he attempted to distinguished that letter from the other letters.

I submit to you, Senator Specter, that there is no distinction between Mr. Summit's letter and the others. Mr. Summit's letter was sent to a well-known lawyer, but he happens to be a well-known lawyer who was well known to my former partners, and particularly Mr. Levy.

Mr. Tuerk knew the facts of the controversy. I had spoken to him. We're talking basically about the withholding with respect of some—it's mentioned in Judge Myers' opinion; it's something over $200,000. About $500,000 in funds was actually successfully withheld from us from Mr. Tuerk and one other.

And on this record, Mr. Summit, I'm sorry to say, has admitted doing what he advised his own clients was improper. Now, there have been a number of submissions to the committee in the last few days or weeks, and I'll mention—and the implication of at least one of them seems to be that a lawyer may advise his clients not to do something, but then is essentially supposed to support them.

I categorically disagree with that. The Code of Professional Responsibility is to the contrary. A lawyer is not supposed to do something that is illegal. The terms of Rule 1.2 of the Model Rules of Professional Conduct are squarely against doing that, and the disciplinary Rule 7-102 is in accordance. A lawyer is not supposed to act contrary to the law.

I draw the Senators' attention to disciplinary Rule 7-102. "In his representation of a client, a lawyer shall not"—Section 7—"assist his client in conduct that the lawyer knows to be illegal or fraudulent." And the performance of that, the doing of that, the making of that effort, the sending out of the odious letters, the attempt of which was clearly and only to force us into a settlement that contravened the partnership agreement that these lawyers had signed——

Senator SPECTER. Mr. Kreindler, I do not wish to interrupt you, but I am going to have to leave the hearing in a few moments to go the floor. While you have been testifying, I have been reviewing two letters here which I would ask if you have been made familiar with—I would assume that you have—from Judge Dontzin.

Mr. KREINDLER. I have not seen a letter from Judge Dontzin.

Senator SPECTER. Are you aware of the fact that Judge Dontzin wrote to Senator Thurmond?

Mr. KREINDLER. Wrote to who?

Senator SPECTER. To Senator Thurmond.

Mr. KREINDLER. No, I was not. This is the first I know of it. I have not—I was not aware of that at all and I have not seen the letter.

Senator SPECTER. Are you aware that Sidney Stein wrote to Senator Biden?

Mr. **Kreindler**. Yes, I have seen Mr. Stein's letter. I'd like to—if I may say, Sidney Stein—I'm sorry about Mr. Stein's letter and I'm shocked by it. From Mr. Stein's letter, it would appear that he was our chief counsel. He was not our chief counsel. We brought in trial counsel from California.

Senator **Specter**. Was he one of your lawyers?

Mr. **Kreindler**. And——

Senator **Specter**. Was he one of your lawyers?

Mr. **Kreindler**. He was certainly one of our lawyers. I simply want to make the point, if you want to pursue it, that I have, thanks to the existence of FAX machines, shown Mr. Stein's letter to Mr. Morgan, and this morning I gave Mr. Metalitz a response from—or a comment, a letter, from Mr. Morgan that he wrote yesterday.

Senator **Specter**. Mr. Morgan was another one of your lawyers?

Mr. **Kreindler**. Mr. Morgan was our chief lawyer.

Senator **Specter**. Who disagrees with Mr. Stein?

Mr. **Kreindler**. He does.

Senator **Specter**. There is a letter from Mr. Stein dated June 18, 1988, to Senator Biden which recites that, at the top of page 2, quote, "Mr. Summit represented Levy, Phillips, and Konigsberg and its partners for a period of well over a year. Mr. Summit and I squared off against each other on virtually a daily basis. We appeared in court scores of times."

And then he describes his activities in the case and he comes to the conclusion that, on page 3, quote, "In this case, I believe the record shows that Mr. Summit urged his clients not to stop Kreindler and Kreindler from receiving its fees, but they rejected his advice. It was proper for him as an attorney and skilled advocate to attempt to convince the court that his clients were entitled to continue their course of action."

"Stuart Summit is an able, aggressive advocate. He represents his clients effectively and, in my opinion, is qualified to sit on the Second Circuit."

Mr. **Kreindler**. I read that, and I disagree with part of it. I would note, Senator Specter, that Mr. Stein said in that letter, quote, "I believe"—this is page 3, quote, "I believed at the time and still believe that such a tactic was not supported by the law, and I so informed my clients."

Now, if the tactic was not supported by the law, for Mr. Summit to engage in the same tactic is a square violation of the disciplinary rule and the rule of the Model Code that I cited a few minutes ago, and I disagree with Mr. Stein.

Senator **Simon**. We will enter both of those letters that have been referred to into the record.

[The Stein letter was previously entered.]

[The letter of Judge Dontzin follows:]

Supreme Court
of the
State of New York

MICHAEL J. DONTZIN
SUPREME COURT JUSTICE

GES' CHAMBERS
NTRE STREET
K, N.Y. 10013

June 14, 1988

Senator Strom Thurmond
United States Senate
Committee on the Judiciary
Washington D.C. 20510-6275

Re: Stuart A. Summit

Dear Senator Thurmond:

I am in receipt of your letter of June 8, 1988 concerning Mr. Stuart Summit, who is a nominee for appointment to the United States Circuit Court for the Second Circuit.

In response to your inquiry, I wish to advise you that as the presiding judge in the case of Levy v. Kreindler, the case which you referred to in your letter, I believe that I can objectively comment on Mr. Summit's activities as a lawyer in that case. As you may know, there were two cases arising out of a dissolution of a prestigious New York law firm (Kreindler & Kreindler). The departing partners sued the remaining partners and vice versa. Originally, I had the Levy v. Kreindler case and a colleague (Honorable Allen Murray Meyers) had the Kreindler v. Levy case. Upon consolidation, I presided over both.

Unfortunately, as too often happens in matters of this kind, this was a hotly fought, highly emotional litigation where men who were once collegial and apparently friendly, were at each other with a vengeance. The litigation lasted well over a year, culminating in a six week trial, which fortunately, I believe for everybody concerned, was settled just before the case was to be submitted to the jury. Rumor has it, that neither of the parties were happy with the settlement. This, in all probability means that it was as fair and reasonable as it could be under the circumstances, given that in many respects this lawsuit was like a matrimonial action between twelve men, if you can fancy that.

I have dwelt at length on the background of the case because it is important in order to fairly evaluate the performances of the litigating lawyers. Despite the difficulties of this lawsuit, the lawyers who represented the parties acted with complete professionalism and I dare say, in an outstanding manner. This includes Mr. Summit who represented the Levy partners and an equally superb lawyer from Los Angeles, William Marshall Morgan, who was brought in to represent the Kreindler faction. Given the obvious pressures that must have been exerted upon them by their clients, as well as the charged circumstances of the case, at no time did Mr. Summit or Mr. Morgan depart from ethical professional standards. Indeed, while each fought vigorously for his client's cause, in the end were major factors in assisting the court in bringing the parties together and effectuating a settlement. I underscore this because we have lawsuits in our Court, arising out of the break up of law firms that have gone on for a decade, and are still unresolved.

As to Mr. Summit's experience and qualifications, I think you have a report of my interview by an FBI agent, shortly after Mr. Summit's nomination was announced. I have known Mr. Summit professionally for almost twenty years. I know him to be an excellent lawyer, a honorable man and a person with a sense of commitment to the highest standards of the legal profession. He has appeared before me on a number of occasions and I have had the opportunity to observe him in various bar association activities, as well as in specific activities having to do with merit selection of the judiciary. At a time when I was Counsel to the Mayor of the City of New York, Mr. Summit was the Executive Secretary to the Mayor's Committee on the Judiciary (a pro bono position). He served with distinction for a period of approximately seven years, and was instrumental in assisting the Mayor's office to select highly qualified people for appointment to the bench.

For whatever it's worth, I think that Mr. Summit is exceptionally well qualified to sit as a judge on the Second Circuit. I am confident that if confirmed and appointed, he will serve with distinction.

I trust that I have been of assistance to yourself and the Committee on the Judicary in this matter.

Sincerely,

Michael J. Dontzin

Michael J. Dontzin
J.S.C.

MJD:bps

Senator **Simon**. In the case where you had not seen the letter, we will give you a chance to insert your response to it in the record. [With post-hearing submissions.]

Mr. **Kreindler**. Yes. I have not seen the Dontzin letter at all.

Senator **Specter**. Well, I think you should have a chance to see it, by all means. As I say, I have perused it, scanned it while you have been testifying. Is it true that Michael J. Dontzin was the presiding judge?

Mr. **Kreindler**. Yes.

Senator **Specter**. Well, in what purports to——

Mr. **Kreindler**. Well, he was one of the two, Senator Specter. The injunction that I referred to earlier was granted by Judge Myers.

Senator **Specter**. Well, he says the matter was consolidated.

Mr. **Kreindler**. That's correct.

Senator **Specter**. Alan Murray Myers had the case and, on consolidation, he says, quote, "I presided over both." You ought to have a chance to see this letter. He makes an analysis and in the next to the last paragraph he says, quote, "For whatever it is worth, I think that Mr. Summit is exceptionally well qualified to sit as a judge on the Second Circuit," and he refers to his knowledge of Mr. Summit otherwise.

I understand the point that you are making, and it may be that a lawyer asserts a position which is not well founded in the law. It may be that such conduct is a violation of ethics. It may be a sufficient violation to disqualify a person or it may not be.

Lawyers with some frequency assert positions which are not well founded in the law. It depends upon what the position is, but speaking for myself, I will take a look at what you have to say and try to make an evaluation of the nature of the litigation and the conduct of Mr. Summit. I have had some experience as a practicing lawyer and would have some familiarity with the field.

Mr. **Kreindler**. Senator Specter, I appreciate what you've said, and I'd like to say this, that I'm not opposing the—I'm here to give the committee the benefit of my experience.

Now, I think it's more than just the technical violation of the code. The code was violated here by Mr. Summit. I say that categorically, but I'm not here to draw attention to a technical violation.

We started with the fact that a large number of lawyers had lived by a partnership agreement for a long time. Now, an agreement among anyone is sacred, and an agreement among lawyers, and a partnership agreement, is something special. And the attitude of mind that for economic benefits we can take a shot at upsetting that offends me as a lawyer.

Senator **Specter**. Mr. Kreindler, the issue is whether or not the litigant played tough, aggressive litigation, hard ball, so to speak——

Mr. **Kreindler**. That's fine

Senator **Specter** [continuing]. Or whether he went beyond the line.

Mr. **Kreindler**. He went—in my judgment, he went beyond the line, and there is more to it. I mean, we sat through a meeting on

December 6 and voted to make two people partners. All of the partners voted to make Messrs. Rubin and Marlin partners.

We didn't know that three of our partners, Mr. Levy, who is here today, and two others, had been meeting with Mr. Summit planning their departure from the firm.

Now, that's just not right, and that attitude to the law is reprehensible. It's not the attitude that I would like to see in a judge. And as I say——

Senator SPECTER. You are saying that when Mr. Summit represented your partners in the course of a transaction where there were subsequent meetings with the partnership and that planning was not openly represented to you—that that is an ethical breach of such a nature to disqualify him?

Mr. KREINDLER. Yes. As you well know, Senator, there is a duty of good faith among partners. As of December 6 when we voted to invite two people to be partners, they had already met with Mr. Summit and we didn't know that. It was not disclosed to us.

When we made these two people partners and we amended the partnership agreement, not in substance but simply to add the names of new partners, they had counseled with Mr. Summit and three of them signed the agreement again, in the face of the intention to attempt to void the agreement.

Now, a responsible, law-revering lawyer does not tell a lawyer client to sign an agreement that he intends to claim is void, in my judgment.

Senator SIMON. If my colleague would yield, are you suggesting that this case in and of itself is serious enough that Mr. Summit should not be elevated to the Federal bench, or are you suggesting that there is beyond this one case a pattern that suggests that he should not be elevated?

Mr. KREINDLER. I think the state of mind and attitude, Senator Simon, revealed by this one case, by this one case, is sufficient to disqualify him. That's my opinion. I think that a lawyer who does what Mr. Summit did in my case reveals his attitude; he reveals his state of mind.

He reveals his reverence, or at least respect, for the law.

I mean, we're supposed to uphold contracts. We're not supposed to destroy contracts. We're supposed to honor the law. We're not supposed to bring ridicule upon the law. The picture of lawyers renouncing their partnership agreement brought discredit on the bar, and this gentleman is responsible for it, in my opinion, along with my former partners.

I think it was a terrible thing to do, and when, on top of that, they attempted to bring us to our knees by imposing economic coercion, my answer to you, Senator, is, yes, that, in my judgment, is sufficient to disqualify someone from being on the Federal bench; certainly, on the court of appeals.

Senator SIMON. Senator Specter.

Senator SPECTER. Well, Mr. Chairman, Senator Thurmond wanted a letter also made part of the record from—what purports to be a letter from Carolyn Gentile, dated June 14, where there is a conclusion which she makes that there was not a violation of the Code of Professional Responsibility.

I have not had a chance to study this letter, but for whatever relevance it has, Mr. Chairman——

Senator SIMON. It will be in the record.

[The letter of Ms. Gentile was previously entered.]

Mr. KREINDLER. I'd like to comment on that letter. That letter is based on the fact——

Senator SPECTER. You are familiar with this letter? You have seen it?

Mr. KREINDLER. This letter was presented to me, and the letter on its face refers to a given state of facts that Mr. Summit presented to Professor Gentile, and on the statement of facts presented to Professor Gentile, I would come to the same conclusion.

She was asked to assume a situation where fees were in question, where there was a dispute as to who was entitled to lawyers' fees, and the question was is a lawyer permitted to ask that his clients' names be put on checks for those fees. Well, of course, the answer is yes.

Senator SPECTER. All right. We understand your point that she operated from facts which are incomplete.

Mr. KREINDLER. She doesn't even mention the existence of a partnership agreement.

Senator SPECTER. Is the essence of your complaint his participation at this meeting where there were activities by your partners and they failed to disclose that they had an intention to withdraw from the partnership?

Mr. KREINDLER. No. That is only one item out of several. The essence is that, it was not proper to attempt to void the partnership agreement, and it was improper to attempt to use economic coercion to bring about an illegal result.

Senator SPECTER. I understand your point on that.

Mr. KREINDLER. Okay.

Senator SPECTER. But do you have anything beyond this one meeting——

Mr. KREINDLER. Yes.

Senator SPECTER [continuing]. Excuse me—where there was a failure to make candid disclosures which you think they had an obligation to make?

Mr. KREINDLER. Yes. There was the counseling with all of the departed partners that led to three of them signing the agreement when they were in the process of attempting to void it.

Senator SPECTER. Were there new partners? Were there individuals who became partners at that time who later sought to void the partnership agreement?

Mr. KREINDLER. All of them sought—they were originally the three partners of Levy, Phillips and Konigsberg.

Senator SPECTER. My question is were there new partners who——

Mr. KREINDLER. Yes.

Senator SPECTER [continuing]. Became partners as a result of those negotiations who at the time they signed the partnership agreement, becoming partners for the first time, at that time had an intent to void or withdraw from the partnership?

Mr. **Kreindler**. I believe so. They signed it in December and very soon thereafter, in January, when the Levy partners, and there were then five of them——

Senator **Specter**. Well, you say you believe so. Do you have evidence that they had made a decision in advance of that meeting to withdraw from the partnership?

Mr. **Kreindler**. No. I am not privy to the discussions between Mr. Summit and his clients, obviously. I don't know what was said between them. I do know——

Senator **Specter**. My question is not whether you were privy to their discussions. My question was whether you had any evidence that at the time they had the meeting and signed the partnership agreement they had already planned to withdraw from the partnership agreement at a later date.

Mr. **Kreindler**. There was a lot of discovery and a lot of depositions. I don't recall specifically at this time if the date when that determination was made appeared, but it was certainly in January——

Senator **Specter**. Well, Mr. Kreindler, I press you on that point because if there is a failure to make a disclosure, that is something very different from asserting a legal position which may be wrong.

Mr. **Kreindler**. Well, let me——

Senator **Specter**. If he is a party to an active concealment, what you are saying is there is fraud.

Mr. **Kreindler**. Well, in answer to your question, I believe there was fraud.

Senator **Specter**. That is why I am asking you if you have any evidence.

Mr. **Kreindler**. Well, the principal basis—I answered you, Senator Specter, before—the principal basis for contesting the partnership agreement was that it was abandoned by course of conduct. Now, that argument was applied to the signing of an agreement weeks before.

Senator **Specter**. Did you make an allegation in this litigation that there was fraud?

Mr. **Kreindler**. Yes; I think in our motion for preliminary injunction, yes.

Senator **Specter**. Are you not sure?

Mr. **Kreindler**. I'm quite sure. We claimed that the sending of the letters was coercive and fraudulent.

Senator **Specter**. Was there a judicial finding of fraud?

Mr. **Kreindler**. I think the Judge Myers decision was a judicial finding; yes, I think so. I think that that's what it was, that the sending of the letters in the face of the partnership agreement and the background, the existence of the partnership, and so forth, was illegal, and it was enjoined.

Senator **Specter**. Well, Mr. Kreindler, illegal is different from fraud. I am the first one to raise the question of fraud here. If you are alleging fraud and complicity by Mr. Summit in the matter, that is one thing which is significantly different from Mr. Summit counseling to break an agreement. That is an entirely different matter.

Had you made any allegation of fraud prior to my mentioning that legal concept?

Mr. **Kreindler**. I have not heretofore, in my opposition to the Summit nomination, asserted fraud. I don't have the complaint in our action, but I believe that we did allege fraudulent conduct in our complaint.

Senator **Specter**. Mr. Chairman, might I make this suggestion? It is gone much longer than the parameter you had originally set, and I know that Mr. Summit wishes to testify.

My suggestion would be that Mr. Kreindler be given leave to give us specific information. This is a point at least of interest to this Senator, and I am talking about fraud now, active misrepresentation. Mr. Kreindler knows what fraud is and whether there is any evidence of that.

I would like the specifics if there is any pleading of it, and I would like the specifics if there is any judicial finding of it, because on the basis of at least what purports to be a letter from the trial judge, there is a question in my mind as to whether he found fraud, or if he had, whether he would be making a recommendation for Mr. Summit to become a second circuit judge.

Mr. **Kreindler**. Judge Dontzin did not have this part of the case, Senator Specter. This was Judge Myers, and the language that Judge Myers uses is very, very strong language. Whether he uses the word "fraud" or not, I don't know. I have to check.

Senator **Specter**. Well, that is pretty important. Also, I would like you to address the question as to whether, if the first judge made a finding which is either fraud or tantamount to fraud, that same kind of an issue would not have been present in the second part of the litigation.

Mr. **Kreindler**. It was not. The second part of—the trial dealt with the single issue of whether the partnership agreement was abandoned by course of conduct.

Senator **Specter**. Well, it may be that a fraud issue from the first part would not be present in the second part, but on one transaction like that, it would seem unusual to me, but that may be the situation.

But if you would provide that to the committee——

Mr. **Kreindler**. I wanted to try that issue, Senator Specter, and our lawyers asserted that position. We did not want a trial on the narrow issue of abandonment of the partnership agreement, but Mr. Summit advanced that position and Judge Dontzin did it that way.

Senator **Specter**. You are saying you wanted to articulate a position of fraud, but you did not get to it in the litigation?

Mr. **Kreindler**. No, I'm not saying that. I'm saying that we did articulate a position of fraud in the litigation, but Judge Dontzin chose to try a narrow issue, which was whether the partnership agreement was abandoned by course of conduct.

Senator **Specter**. So you put evidence of fraud before Judge Dontzin?

Mr. **Kreindler**. No. I would have liked to. But it was excluded by virtue of the issues that we were trying. Judge Dontzin directed that the single issue would be whether the partnership agreement had been abandoned by course of conduct. He did not let us get into the issues of coercion and fraud.

We were suing for punitive damages, among other things, because of the fraud of the Levy partners, because of the effort to coerce. That was the action that went before Judge Myers.

Senator SPECTER. So you are saying that you had evidence of fraud that you tried to put on before Judge Dontzin that he would not let you put on?

Mr. KREINDLER. Judge Dontzin decided that the way to handle this complex litigation was to carve out of it one issue and reserve all other claims and issues for later, and he decided that the trial would go forward on the *Levy-Phillips* case, the case to declare the partnership agreement void because of abandonment by course of conduct. And that is the only issue on which we went to trial, and all other issues were reserved for some future date.

Now, we were on trial for 6 weeks on that issue, and the day before the jury came back the case was settled. The jury was going to clearly decide in our favor and we settled it. I mean, that was the end of it, and when we settled it, we settled everything.

Senator SPECTER. Why did you settle it when it was so clear they were going to decide in your favor?

Mr. KREINDLER. We settled it because it was a very advantageous settlement for us. It gave us——

Senator SPECTER. A hundred cents on the dollar?

Mr. KREINDLER. Pardon me?

Senator SPECTER. One hundred cents on the dollar?

Mr. KREINDLER. Since you ask me, I think we got more than that under that agreement. I've never said this in public before because, well, they wanted the settlement agreement restricted and held confidential. I fought that and we took it up to the Appellate Division.

But, yes, Senator Specter, we concluded that the settlement was at least as advantageous to us as the terms of the partnership agreement itself, and that's why we settled. When they took this position, when they attempted to destroy the partnership agreement and when they attempted to coerce us, they created an attitude where we just drew the line and we weren't going to settle unless the partnership agreement was vindicated, which it was.

Senator SPECTER. Did you file any complaint before the New York Bar Association, the equivalent of the Committee of Censors, for violation of the Code of Professional Responsibility against Mr. Summit?

Mr. KREINDLER. No. When the letters were sent out, I wanted to file a grievance before the grievance committee of the bar association. I was counseled by my lawyers not to do that. They said let's fight it out in the litigation and not get the grievance committee into it, and I followed my lawyers' advice.

Senator SPECTER. And how about after the litigation was over? You did not file anything with the grievance committee?

Mr. KREINDLER. No, no.

Senator SPECTER. Why not?

Mr. KREINDLER. Well, it was over. I just—why not? I don't know. I haven't given any thought to it. I think there was a violation.

Senator SPECTER. It is not over. Here you are.

Senator SIMON. I do not mean to interrupt this.

Mr. KREINDLER. I'm not, Senator——

Senator **Specter**. If you cut me off, Mr. Chairman, I will not object. [Laughter.]

Senator **Simon**. Okay. You are being cut off.

May I suggest, Mr. Kreindler, that whatever you wish to submit for the record, that you do so within the next 7 days?

You mentioned that a Mr. Morgan was your chief counsel?

Mr. **Kreindler**. Yes.

Senator **Simon**. What is his first name?

Mr. **Kreindler**. William Marshall Morgan, and I do have his letter.

Senator **Simon**. Okay. We will enter his letter in the record. The staff may wish to ask him some questions.

[The letter of Mr. Morgan was previously entered.]

Senator **Simon**. We will follow through, and we will expect to hear from you within the next 7 days, then.

Mr. **Kreindler**. Yes. I have some copies of that letter. What shall I do, mechanically, hand it up or something?

Senator **Simon**. Someone from the staff will get that, and we thank you, Mr. Kreindler.

Mr. **Kreindler**. Thank you, Senator.

[The statement of Mr. Kreindler follows:]

United States Senate
Committee on the Judiciary

Statement

of

Lee S. Kreindler

Re: Nomination of Stuart A. Summit to United States Court of Appeals

Hearing, June 21, 1988

This statement is submitted in response to the invitation of Senator Paul Simon of the United States Senate Judiciary Committee to submit a statement and testify on this nomination.

I am the Senior Partner of Kreindler & Kreindler, a twenty lawyer firm in mid-Manhattan handling major aircraft and other tort and commercial litigation.

Three years ago five partners in my firm decided to resign and form a new firm. They hired Mr. Summit as their lawyer, and acting on his advice, left the firm and renounced our partnership agreement, which they had signed and relied on many times.

The partnership agreement provided for generous retirement benefits in lieu of a dissolution share of assets and receivables. It also provided that on unfinished business which departing partners took with them our Senior Partner would equitably decide the relative shares of fees at the conclusion of each case.

The partnership agreement had been drawn up many years before by Joseph Iseman, one of the senior partners of the eminent firm of Paul, Weiss, Rifkind, Wharton and Garrison, and it was in part patterned after the Paul, Weiss partnership agreement.

It provided that the firm would have a continuing existence and in the event a partner, or partners, left the firm there would be no dissolution.

Despite this, our departed partners wrote to outside parties who owed, or would owe the firm money (defendants in cases, insurance companies, forwarding lawyers, etc.), and told them that our firm was in dissolution; and instructed them not to pay any money to Kreindler & Kreindler without putting the names of the former partners on the checks.

This occurred at a time when the departing partners knew the firm was financially strained due primarily to difficulty resolving asbestos cases which they themselves had been handling. Mr. Summit, who was totally in charge of their case, clearly sought to force the firm into an unfavorable and unjustified settlement by shutting off our cash flow.

We immediately brought an action for an injunction, and compensatory and punitive damages. Our motion for a preliminary injunction was heard by Judge Alan Murray Myers, in New York Supreme Court, who granted the preliminary injunction with a strongly worded opinion in which he found that there was a high probability of success in our action. Judge Myers' Opinion is attached as Exhibit A.

Mr. Summit, on behalf of our former partners, brought an action to set aside our partnership agreement, dissolve the firm and distribute its assets. This action was tried before Judge Michael Dontzin and a jury on the single issue of whether the partnership agreement had been abandoned by course of conduct. The trial lasted for six weeks. The case was settled very advantageously to our firm just before it went to the jury, since it was obvious to everyone that the jury would decide in our favor.

In subsequent litigation between two previously retired partners and Mr. Summit's clients, the partnership agreement was found by Judge Dontzin to be valid and enforceable. Judge Dontzin's opinion is attached as Exhibit B.

The position advanced by Mr. Summit, that the partnership agreement was unenforceable, was frivolous. It was drawn from whole cloth to provide a basis for the "freeze" letters and the effort to force us into an unwarranted settlement. Indeed, the concept of lawyers repudiating their own signed partnership agreements, on which their partners had relied for many years, is repugnant to any honorable and responsible lawyer.

That position, and the subsequent "freeze" letters were, in my judgment, a clear violation of DR 7-102 of the Code of Professional Responsibility, which provides that a lawyer, in his representation of a client, "shall not...(1) assert a position or take other action on behalf of his client when he knows or when it is obvious that such action would serve merely to harass or maliciously injure another....(2) knowingly advance a claim...that is unwarranted under existing law....or (7) counsel or assist his client in conduct that the lawyer knows to be illegal or fraudulent."

It was my feeling at the time that we should file a grievance complaint against Mr. Summit for his ethical violation. My lawyers prevailed upon me not to do so, advising that we should confine our activities to the litigation.

I have read the transcript of the Committee's hearing of April 21, 1988. My comments on Mr. Summit's testimony, insofar as it relates to our case, are as follows:

Mr. Summit acknowledged the impropriety of the "freeze" letters. Acknowledging the accuracy of Senator Leahy's description of the case (p. 30), and the harsh words of Justice Myers' Opinion, Mr.Summit stated that the tactic of sending out the egregious letters was not his idea, "and indeed I advised against it....".

> "I advised our clients not to write those letters. I told them that I thought it very likely that if they did write those letters they would be the subject of an injunction, and unfortunately my prediction was correct." (P.32)

Mr. Summit cannot escape responsibility even if it was his clients' idea, rather than his own. He was running the case for his clients. He was in charge of it. He was aggressively seeking settlement based on the coercive effect of the letters.

Mr. Summmit, in his sworn testimony before this Committee, denied he sent out letters himself. He blamed them on his clients, and acknowledged their impropriety:

> "No, I did not, Senator. They sent those letters themselves. We would not have sent those letters and we did not." (P.33)

Shown his letter to Carl Tuerk of April 26, 1935, however, Mr. Summit recanted, and acknowledged to Senator Leahy that he had written the letter. (P. 34). That letter is attached as Exhibit C.

Thus Mr. Summit admitted doing what he advised his clients "as a legal matter... they were not able to do" (P. 33) and what "would be the subject of an injunction." (P. 32). This, it seems to me, may be the clearest and simplest evidence of his unfitness to be a judge.

Mr. Summit's attempt, in response to Senator Leahy's questions, to distinguish his own letter from those sent out by his clients, is insubstantial. The language of the letters is almost the same:

> "In order to assure that our interests are protected...[you] should make all checks payable to our two firms jointly." (Levy letters of April 19, 1985)

> "Specifically, we request on their behalf that any check to be issued be made payable to both Kreindler & Kreindler and Levy Phillips & Konigsberg jointly." (Summit letter of April 25, 1985)

Mr. Summit says his letter was to a well known lawyer in Baltimore "explaining the entire argument as to why that was a fair request" (P. 34). Mr. Summit's letter, however, was to Carl Tuerk, who was and is a close friend and professional associate of our former partner (Mr. Summit's client) Stanley Levy. Mr. Tuerk was in close contact with Mr. Levy, as well as with us. He knew the situation and did not need any such explanation. The purpose of the Summit letter was clearly to provide Mr. Tuerk with an excuse to withhold our funds.

Furthermore, all of the letters in question were to well known lawyers or insurance claims executives, and all purported to explain the argument.

The Summit letter to Carl Tuerk is attached as Exhibit C and the Levy letter to George Tompkins is attached as Exhibit D. The only significant difference is that Mr. Summit's letter was more effective. Mr. Tompkins is one of the leading aviation defense lawyers in the country. Fortunately for my firm Mr. Tompkins and most of the recipients of those letters, did not comply with the Levy request. Mr. Tuerk did comply with the Summit request, however, and held back a sizeable sum of money for several months. (See Judge Myers' Opinion, Exhibit A, P. 3) Mr. Summit used this as a bargaining chip in his effort to get us to cave in to an unwarranted settlement.

The importance of our case to the Summit nomination is that it displays an underlying disrespect for the law that makes Mr.

Summit unfit to be a judge. His letter, those sent by his clients, and the lawsuit he brought against us to set aside our agreement and dissolve our firm were attempts to coerce; an effort to achieve a result by the use of economic pressure, rather than facts, law and justice.

The architect or administrator of such a policy should not be a judge.

Mr. Summit tried to defend his clients' conduct:

> "The Kreindler and Kreindler firm was, in their judgment, starving them out by declining to make any distributions to them of monies as they came in." (P.33)

I specifically deny the implication of that testimony. Under the K&K partnership agreement the firm had a continuing existence and did not dissolve upon resignation by one or more partners. A retiring partner is entitled to substantial payments over a period of seven years based upon the firm's net profit. This is, explicitly, in lieu of distributions out of incoming money or interests in pending cases. The withdrawing partners were not entitled to money coming into the firm, except as later translated into retirement benefits, and they and Mr. Summit knew it.

In his testimony before this Committee Mr. Summit claimed to be a peacemaker; one who tries to settle cases. My case, however, was one in which he started off with a settlement; a valid partnership agreement drawn up by one of our leading firms years before, and signed many times by his clients. The partnership agreement resolved all questions concerning the relative rights and responsibilities of retiring partners and the firm. It was Mr. Summit who advised his clients to break their contract. He unsettled the case.

Mr. Summit characterized our situation as the "breakup of the firm known as Kreindler and Kreindler," and he said his clients had "almost half the equity interest in that firm." (PP. 29, 33) Neither statement was correct.

There was no "breakup" of our firm. The firm continues to exist today at the same address, under the same name, and operating under the same partnership agreement it has had for the last twenty five years. Mr. Summit's clients had an equity interest of 31.7%, and not "almost half".

Under Mr. Summit's tutelage, and six weeks before they resigned, they went through the charade of proposing and then participating in the election of two associates as partners, thereby egregiously violating their fiduciary duty of disclosure to us as partners. And under his direction they renounced their partnership agreement on which all partners had relied.

Other partners had withdrawn from our firm but no one, until Mr. Summit came along, suggested that lawyers should repudiate their contract. Mr. Summit was, therefore, a cause of the costly and unnecessary litigation he now decries. Mr. Summit testified:

> "I viewed that as a terrible example of what lawyers can do to each other and I felt badly about it throughout. From the beginning of our having been retained on the matter I almost begged our adversaries to agree on a mediator or an arbitrator."

That picture is distorted. First, Mr. Summit was responsible for these lawyers reneging on their own signed contract. Then he either orchestrated or condoned an effort to coerce us into submission. There was no way we would agree to a mediator or arbitrator under these circumstances. He was the antithesis of a peacemaker.

Mr. Summit's handling of our case cannot be excused as aggressive advocacy. I am an aggressive advocate, but I work within the legal and ethical rules.

The litigation which Mr. Summit precipitated was unnecessary, onerous, and extremely expensive. It was the product, however, of Mr. Summit's contempt for the law and his advice to his clients that they should try to break their contract. The effort to drive us into submission was so outrageous that it was enjoined by the court.

I believe that Mr. Summit's disrespect for the law and his attitude toward the legal process as an instrument for coercion, as well as his admission to this Committee that he personally did what he counseled his clients was improper, are such that he is unfit to serve as a judge.

* * *

My background and experience may be relevant. I have been a member of the New York Bar for thirty-nine years, trying cases and arguing appeals in New York and elsewhere throughout the country.

I have argued cases in the Supreme Court of the United States and most of the Circuit Courts of Appeal.

I am a former President of the International Academy of Trial Lawyers and I am a Fellow of the American College of Trial Lawyers.

I am presently one of the Plaintiffs' Lead Counsel in the multi-district litigation arising out of the crash of the Northwest Airlines DC-9 in Detroit in August of last year, and I have been one of the lead counsel in the litigation arising out of the Arrow Air Disaster in Gander, Newfoundland, the Delta Lockheed 1011 crash at Dallas-Ft. Worth, the Chicago DC-10 cases, and many other well known cases. A significant number of federal judges have, therefore, respected my reliability and judgment to the point where they have given me responsibility for the protection of innocent victims of major accidents.

I have been Chairman of the Aviation Litigation Committees of the Litigation and Insurance (TIPS) Section of the American Bar Association. I am author of the two volume book "Aviation Accident Law" which has been the standard work on aviation accident law in the United States since it was first published in 1963.

Lee S. Kreindler

EXHIBIT "A"

SUPREME COURT, NEW YORK COUNTY
SPECIAL TERM, PART I

- -

MC 7
Index #9790/85
&

KREINDLER & KREINDLER,

Plaintiff,

- against -

STANLEY J. LEVY, STEVEN J. PHILLIPS,
ALAN J. KONIGSBERG, IVAN B. RUBIN
DONALD J. MARLIN, Individually and as
partners in LEVY, PHILLIPS & KONIGSBERG;
LEVY, PHILLIPS & KONIGSBERG; CARL F.
TUERK, JR.; GERALD H. COOPER; A.
THOMAS BECKMAN, individually and as
partners in COOPER, BECKMAN & TUERK;
COOPER, BECKMAN & TUERK and JOHN
DOES 1 through 50,

Defendants.

- -

ALLEN MURRAY MYERS, J.:

There are before me two motions and a cross motion. Plaintiff, Kreindler & Kreindler ("K&K") a law partnership, moves for a temporary injunction to restrain the defendants, five former K&K partners ("Levy partners") from interferring with or making claims to K&K partnership accounts receivable, and directing K&K partnership debtors[1] not to withhold and to pay over to K&K moneys due from them to K&K.

The defendants, the Levy partners, cross-move for a stay of all proceedings in this case pending the determination of a prior action instituted by the Levy partners against K&K

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[1] i.e. forwarding counsel, liability insurance carriers, K&K co-counsel, and others

(Sup. Ct., NY. County, Index #6771/85) on March 29, 1985 for a declaratory judgment and an accounting, now pending before Dontzin, J.; or consolidating the two actions.

The defendants, Cooper, Beckman and Tuerk ("CBT"), Maryland co-counsel with K&K in various asbestos cases commenced in Maryland, move to dismiss the action against them for lack of personal jurisdiction, or on the ground of "forum non conveniens"; or to stay the action against them on the grounds of "forum non conveniens" and "another action pending" in a Maryland Court.

The action herein was commenced on April 29, 1985 by K&K for injunctive relief and compensatory and punitive damages. The complaint alleges a plan conceived and instigated by the Levy partners to deprive K&K of fees lawfully due it.

These actions among the parties arise out of the withdrawal (on Jan. 21, 1985, effective Mar. 22, 1985) of five of the twelve partners at Kreindler and Kreindler. Kreindler and Kreindler is a well known law firm specializing in the fields of aviation, asbestos, products liability, tort and personal injury law which are handled on a contingency fee bases.

On March 19, 1985 the five defecting partners physically left the firm's offices and formed their own firm, Levy, Phillips and Konigsberg which is engaged in a similar practice. At issue is the division of about $500,000. in legal fees earned by K&K prior to the resignation of the five Levy partners.

The Levy partners have notified K&K debtors that they have left K&K, that they have an interest in any money due K&K by reason of suit, settlement or otherwise, and that checks should no longer be made payable to K&K but to K&K and the newly formed Levy firm, jointly.

The Levy partners contend that it was proper for them to do so to protect their interest in the fees. They urge that such fees should be deposited into a joint escrow account in the names of both firms until the dispute regarding the division of the fees is resolved.

The law firm of Cooper, Beckman and Tuerk ("CBT") allegedly are holding up the payment of about $241,000. CBT has instituted an interpleader action in the Circuit Court of Kent County, Maryland to determine the rights to the money of the contending partners and it has deposited and will continue to deposit money due K&K into the Maryland Court.

The Issues

The Levy partners contend that the partnership agreement was null and void; the partnership was one at will, that their resignations dissolved the partnership, and that the agreement was terminated, and abandoned.

K&K contends that the partnership was not one at will; the partnership agreement is effective; it survived the resignations; and even if the partnership may be in dissolution, it has not been terminated; and that under any circumstances, the accounts receivable belong to the partnership and not to the partners, individually even after dissolution. What the Levy partners seek is in reality an attachment of K&K funds without a court order.

The K&K Motion for a Temporary Injunction

On a motion for a preliminary injunction the movant must demonstrate three essential elements: (1) a likelihood of ultimate success on the merits, (2) irreparable injury absent the granting of the preliminary injunction, and (3) a balancing of the equities. Albini v Solork, 37 AD2d 835; Chrysler v Fedders Corp. 63 AD2d 567. Since it is an extraordinary remedy it should be granted only with great caution. Chrysler v Fedders Corp. supra; Xerox v Neises 31 AD2d 195. A motion for a preliminary injunction searches the record. Guggenheimer v Ginzburg, 43 NY2d 268.

The undisputed facts are that the Levy partners were partners in K&K pursuant to a written partnership agreement; Levy, for 17 years, from Jan. 1, 1968; Konigsberg, for 8 years from Jan. 1, 1977; Phillips for 5 years from Jan. 1, 1980; and Rubin and Marlin for about 3 months from Jan. 1, 1985.

The Partnership Agreement

The partnership agreement was prepared by a prestigious and highly respected New York law firm. It is alleged and not disputed that it was patterned after that firm's own partnership agreement. The agreement is attached as an exhibit to the complaint. It consists of seventeen typewritten pages. It is dated Jan. 1, 1972, but refers to prior similar agreements dated as of July 14, 1959 and as of July 21, 1966. The agreement signed by defendant, Levy and others on Jan. 8, 1968 was identical to the 1972 agreement. The partnership agreement had been amended, without change in substance, to add or subtract partners, four times between January 1, 1972 and March 22, 1985. The Levy partners have appended their signatures to the agreement and its amendments on the following dates:

Levy, in the month of January, 1968, 1972, 1976, 1980 and 1981;

Kongisberg, in the month of January, 1976, 1980, 1981 and on Dec. 6, 1984;

Phillips, in the month of January, 1980, and 1981;

Rubin and Marlin on Dec. 6, 1984.

The Partnership Agreement provides that the Kreindler & Kreindler partnership does not terminate upon the withdrawal of any one or more partners. Instead, it provides that no single partner can terminate the partnership, and that a written instrument signed by partners holding at least a 75% interest in the net profits of the firm is required to terminate the partnership. The Levy Partners did not hold a 75% interest in the net profits of Kreindler & Kreindler, nor has there been any such written instrument. Specifically, the Partnership Agreement provides, _inter alia_:

> 1.* * * The partnership shall have a continuing existence, and shall not terminate by reason of the admission, retirement, incompetence or death of any one or more partners.
>
> "Retirement" is defined in Section 2 of the Partnership Agreement as including any voluntary or involuntary withdrawal.
>
> * * *
>
> 13. A Retiring Partner shall not have the right to demand liquidation of the partnership. The rights and remedies of a Retiring Partner shall be limited to those specified in the following Articles of this Agreement
>
> * * *
>
> 21. This agreement may not be terminated, amended or modified except by written instrument signed by partners having percentage participations in Partnership Net Profit for the preceding calendar year aggregating at least 75% of all such participations.
>
> 4. (a) (last sentence). Any Partnership Income shall belong to the partnership from the earliest moment when the right to receive the same inures to any partner.

Articles 14 and 15 of the agreement are entitled respectively, "Repayment of Retiring Partner's Capital" and "Payment of Retiring Partner's Share of Net Earnings". In nine tupewritten pages Articles 14 and 15 set forth the rights of a retired partner and meticulously provide for the precise manner of paying out such a retiring or resigning partner.

Although Article 7 of the partnership agreement provides that,

> "The Senior Partner shall have the sole right to determine the drawings of the partners and the proportions in which the partners will share in Partnership Net Profit, or loss of the partnership, for any calendar year."

it also provides that,

> "Notwithstanding the foregoing, the rights of a Retired partner fixed by the provisions of this agreement may not be altered by the Senior Partner."

The Levy partners contend that the provision in Article 7 giving the Senior Partner the sole authority to fix the share of each partner in the firm's net profits for each calendar year makes the agreement invalid, unenforceable, against public policy and in violation of the Code of Professional Responsibility because it permits Lee Kreindler (the senior partner) and the remaining members of his firm to share in legal fees earned by their former partners in an amount not proportionate to the services which they performed for the client and the responsibility for the matter assumed by them; and because it casts a chilling restriction on the ability of the client to retain former partners to represent him since it imposes unreasonable and impermissible limitations on the ability and desire of those withdrawing partners to accept such a retention." (Levy affidavit sworn to May 7, 1985 at p.7).

The Law

At the outset we must distinguish between the dissolution and termination of a partnership. Section 60 of the Partnership Law provides that,

> "The dissolution of a partnership is the change in the relation of the partners caused by any partner ceasing to be associated in the carrying on as distinguished from the winding up of the business."

Section 61 P.L. provides that,

> "On dissolution the partnership is not terminated, but continues until the winding up of partnership affairs is completed."

Even during an action for an accounting the business of the partnership continues (Section 75 P.L.). It is elementary that the accounts receivable of a partnership in dissolution are partnership property and not the separate property of any of the partners. Accounts receivable are assets of the partnership which must be distributed in accordance with the "Rules for Distribution" set forth in section 71 P.L. It must first be applied to the payment of liabilities. Only if there is a surplus of assets over liabilities, i.e.

profits, can the parties share as provided for in the partnership agreement. The partnership agreement provides how this is to be done without liquidating the assets of the partnership or discontinuing its business.

The issue before me is a narrow one. Whether the Levy partners are entitled to the partnership accounts receivable and to interfere with or prevent their collection by the partnership. The answer is clear and unequivical. They are not and cannot.

"A partner has no personal right in any specific partnership property..." Weisinger v Rae, 1959, 19 Misc 2d 341,349; 188 NYS2d 10,19.

I do not have to determine the validity of the partnership agreement. Justice Dontzin will decide in the action for a declaratory judgment now pending before him whether the partnership agreement is valid and enforceable and the rights of the parties. But under any circumstances the accounts receivable belong to the K&K partnership to be distributed either in accordance with the partnership agreement or the Partnership Law or both. The individual partners do not even have a colorable claim to the K&K accounts receivable. Without the unfettered cash flow from the accounts receivable K&K would be unable to meet its liabilities to creditors including clients who have prior claims to partnership assets than do the partners. It would also be unable to meet its liabilities to its partners.

Cash flow is the life blood of K&K's business. A stoppage may cause its demise. It would be irreparably injured. In addition, I find that there is a likelihood that K&K will succeed on the merits at the trial of this action; and that equity is with the K&K partnership.

Accordingly the plaintiff's motion for a preliminary injunction against the Levy partners is granted.

The injunction is granted without prejudice to the rights of the Levy partners to their share of the partnership profits as determined in the action for a declaratory judgment.

The order to be submitted shall provide for a surety bond of $250,000; that the former K&K partnership be wound-up and the books closed out; that the new K&K partnership open a new set of books as of the inception of the new partnership; that a new bank account be opened for the new partnership; and that the old books and records be open for inspection by the Levy partners or their representatives at all reasonable hours.

The cross motion of the Levy partners is granted to the extent of consolidating this action with the action pending before Justice Dontzin. I do this in agreement with Justice Dontzin's decision of July 25th, 1985 that,

> "Judicial efficiency requires that only one judge carry the responsibility. Unless and until directed otherwise by the appropriate Administrative Judge, I [Dontzin] shall retain jurisdiction over these cases."

With reference to the motion of CBT, I grant that part which requests a stay of the action against them until the further order of this court. However the Levy partners are directed to release their claim to the K&K funds emanating from the CBT asbestos cases in Maryland. This release shall be without prejudice to their rights against K&K.

Settle order.

Dated: July 31, 1985

S/ A.M. M.
J.S.C.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK : IAS PART 28

EXHIBIT "B"

---X

STANLEY J. LEVY, STEVEN J. PHILIPS,
ALAN J. KONIGSBERG, IVAN B. RUBIN
and DONALD I. MARLIN,

Plaintiffs,

INDEX NUMBER:

6771/85

-against-

LEE S. KREINDLER, PAUL S. EDELMAN,
GERALD A. ROBBIE, MELVIN I. FREIDMAN,
MARC S. MOLLER and FRANCIS G. FLEMING,
Individually and as Members of the Law
Firm of Kreindler & Kreindler, a
partnership, and MICHEL F. BAUMEISTER
AND MILTSON G. SINCOFF,

Defendants.

---X

DONTZIN, J.:

This proceeding involves certain unresolved issues and remnants of a complicated and protracted litigation involving plaintiffs (LPK) and their former partners of Kreindler & Kreindler (K&K). The remaining defendants involved here, former partners of K&K, are Sincoff who resigned on January 13th, 1985 and Baumeister, who resigned on October 1, 1984, both resignations having taken place before that of LPK partners. The legal issue here is whether certain provisions of a 1972 written partnership agreement (the Agreement), providing for a payout of retirement benefits to resigning, retiring and deceased partners' estates are legally enforceable.

The court has before it several motions and cross-motions which it shall consider together. Theses include: (1) Plaintiffs' motion pursuant to Section 3212 CPLR to dismiss Sincoff's and Baumeister's counterclaim on the grounds that they fail to state a cause of action; (2) Sincoff's cross-motion for discovery of LPK's 1986 earnings in order to determine his retirement benefits under the 1972 agreement; (3) Sincoff's and Baumeister's cross-motions for partial summary judgment for monies due them by Levy, Phillips and Konigsberg for retirement benefits under the 1972 agreement; and (4) Baumeister's cross-motion for a declaratory judgment as to his rights as a resigning or retiring partner under this 1972 agreement.

While many issues have been raised by all parties, the court will only address and consider plaintiffs' claims that the 1972 agreement is void and unenforceable for lack of consideration and illusoriness; that the retirement provisions are impermissibly uncertain and indefinite; and that Article 17 of the agreement (retirement provision) violates the Code of Professional Responsibility. The issue of anticipatory breach raised in plaintiffs' papers is moot since any rights that Sincoff and Baumeister have under the 1972 agreement to retirement payments accrued in March 1987.

As to Sincoff and Baumeister - the court will only consider their claims for payout benefits allegedly due under the retirement provisions of the 1972 agreement, since all other claims made by them in their papers were in effect withdrawn during oral argument. (Minutes, June 1987)

Plaintiffs' motion could be quickly disposed of by relying upon the age old legal doctrine and policy of strictly enforcing the rights and obligations of partners, in accordance with their written partnership agreement - which doctrine and policy is particularly suited to situations where lawyers are involved - especially sophisticated and mature lawyers as plaintiffs, some of whom had a hand in drafting the agreement involved here. (See *Levy v. Leavitt*, 257 NY461 [1931]; *Lanier v. Bowdoin*. 282 NY 32, 38 [1939], mot. for rearg. den. 282 NY611. Moreover, on state of the record, which perforce must include the prior proceedings and voluminous trial record in the case in chief,(1.) there is a sufficient basis to conclude that plaintiffs are estopped from challenging the validity of the 1972 agreement since by their actions they have ratified that agreement on numerous occasions since the agreement came into existence (*Ferguson v. Ferguson*, 97 AD2d 892, 891; *Scientific Management Institute v. Raymond Mirrer*, 27 AD2d 845, 846.

Rather than rely on these legal concepts as a basis to deny plaintiffs' motion, it seems more appropriate to do so upon an analysis and discussion of plaintiffs' claim heretofore outlined

Plaintiffs contend that the 1972 agreement lacks consideration because it fails to provide any standard for

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(1.) After more than eighteen months of litigation and a six week trial the LPK & K&K cases were settled just prior to summations and charges.

determining in advance the amount of compensation that will be earned by K&K partners. Specifically, that the agreement lacks a mutual promise between the parties to share in the profits of the partnership - what plaintiffs consider to be the most basic element of a partnership agreement. Plaintiffs contend that the agreement is illusory because it leaves to the senior partner the unbound discretion, without standards and guidelines, the determination the partnership profit shares.

Here we have a multilateral agreement between the several partners, each making promises to the other, not an agreement between the senior partner and other partners. There are mutual promises amongst each of the partners to carry out his professional duties, and in accordance with the fiduciary duties that the law imposes, to share the profits of the partnership (See Matter of De Laurentiis, 9 NY2d 503, 509-510[1961]; Newburger, Loeb & Co. v. Gross, 563 F2d 1057, 1078 [2d Cir. 1977]), cert. denied 434 US 1035 [1978]; Meinhard v. Salmon, 249 Ny 458 , 463-46 (1928); Corbin on Contracts, p.435 [1963]).

The fact that each partner was unaware of what his share of the profits would be until the end of the year is of no consequence. As long as a partner is compensated, as all were here since the inception of the 1972 partnership agreement, there is no failure of consideration. (See Mar-Bond Beverage v. Dublin Distributors, 9 AD2d 951, Grossman v. Schenker, 206 NY 466).

Given the nature of the K&K practice, whose income in the main was based on contingency fees (for representing individuals in personal injury actions) there was no way of determinihng until the end of the year what the profits would be. Nor was there any way of predetermining what contributions would be made by the respective partners to generate the income and profits, as well as the other factors that must be taken into consideration before determining particular distributive profit shares, such as the experience, tenure, ability, etc. of the partners.

Finally, the equitable doctrine of good faith and fair dealings, and mutuality of fiduciary duties amongst the partners (including the senior partner) which is controlling in partnership agreements, insures the rights of the partners to a fair distributive share of the profits. (See Wood v. Lucy Lady Duff-Gordon, 222 NY88 [1917]; Section 43 (1) New York State Partnership Law. This fidcuiary duty and the obligation of fair dealings between the partners even extends to beyond the point in time where any partner withdraws from the partnership (See Greene v. Greene, 47 NY2d 447, 453).

In the context and history of this case, the basis of plaintiff's claims of lack of consideration and illusoriness must fail. For all the years plaintiffs were K&K partners (2.) each received a distributive share of the profits pursuant the agreement. Each partner in reality had a hand in determining his as well as the other partners profit shares, by evaluating his own as well as his fellow partners contributions to the firms' profits

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(2.) Levy was a K&K partner since 1968 and a signatory of the 1972 Agreement. Konigsberg becamse a K&K partner in 1978, Phillips in 1980. Over the years, each signed several amendments reaffirming the agreement. Rubin and Marlin because partners in 1985 and immediately thereafter resigned to join the LPK firm in a given year and by recommending the various distributive shares to be earned by each. This was the very basis upon which the senior partner allocated the distributive shares as well as his own. By operating in this fashion over the years, the plaintiffs have in essence ratified the partnership agreement, insofar as this critical issue of distributive shares of profits raised by them is concerned (Rubin v. Dairymen's League, 284 NY32,Wood v. Lucy Lady Duff-Gordon, supra, Mar-Bond Beverage v. Dublin Distributors, supra). The fact that the senior partner had the final say as to the distribution of profit shares, does not as a matter of law demonstrat that the partnership agreement lacks consideration or is illusory. (See Jackson v. Hunt Hill and Betts, 7 NY2d 180 [1959]). Indeed this power is a well recognized and enforceable dispute resolution provision Jackson v. Hunt Hill and Betts, supra, Gill v. Mallory, 274 App Div 84.

Turning to the issue of lack of mutuality of obligation raised by plaintiffs, it should be noted that the law does not necessarily require that mutual promises must create in each of the parties identical rights and obligations. (This becomes obvious when one considers the complexities and intricacies of the agreement involved here). It is only where a lack of mutuality would leave a party without consideration for a promise that an agreement is unenforceable. Therefore, it is the consideration that is crucial. (Riccardi v. Modern Silver, 45 AD2d 191, affd 36 NY2d 945 [1975]). Matter of Deckers and Mackelbert (NYLJ, April 16, 1985, p. 6 col. 2 [Sup. Ct. N.Y. County]). Here the 1972 agreement

viewed in its entirety, as it must be viewed, clearly involves numerous corresponding promises, and provides for a share of the partnership profits to each of the partners who freely entered into the agreement.

Plaintiffs' contentions that the retirement provision of the agreement are violative of public policy and the Code of Professional Responsibility, particularly DR. 2-107 (3.) **DR. 2-108,** (4.) **cannot be sustained.**

(3.) DR2-107. Division of Fees Among Lawyers

(A) A lawyer shall not divide a fee for legal services with another lawyer who is not a partner in or associate of his law firm or law office, unless:

(1) The client consents to employment of the other lawyer after a full disclosure that a division of fees will be made.

(2) The division is made in propertion to the services performed and responsibility assumed by each.

(3) The total fee of the lawyers does not clearly exceed reasonable compensation for all legal services they rendered the client.

(B) This Disciplinary Rule does not prohibit payment to a former partner or associate pursuant to a separation or retirement agreement.

(4.) DR 2-108. Agreements Restricting the Practice of a Lawyer

(A) A lawyer shall not be a party to or participate in a partnership or employment agreement with tnother lawyer that restricts the right of a lawyer to practice law after the termination of a relationship created by the agreement, except as a condition to payment of retirement benefits.

(B) In connection with the settlement of a controversy or suit, a lawyer shall not enter into an agreement that restricts his right to practice law.

Plaintiffs contend that the senior partner's right under the Agreement to determine the departing partners' share of a fee of a case in which the departing partner was substituted, but which originated in K&K, has a chilling effect on the right of a client to choose counsel. The basis of this claim is that the departing partners will be loathe to take cases where the fee is uncertain, and thereby frustrate a clients freedom of choice. This is simply answered by stating as heretofore discussed, that the senior partner under principles of equity is required to act in good faith and upon his failure to do so, there is always a remedy in *quantum meriut*. Moreover, it is fanciful to assume that a departing partner will forego an opportunity to be substituted on cases on which he worked, because he may be uncertain as to what his share of the fee will be given all the avenues for relief afforded to him to set "a fair and reasonable fee."

DR 2-107 of the Code of Professional Responsibility which deals with the division of fees among lawyers does not "prohibit payment to a former partner or associate pursuant to a separation or retirement agreement" (DR 2-107 [B]). Moreoever, the purpose of this canon is to prevent the splitting of fees without the clients consent and where the division is disproportionate to the work performed (*New York State*, 414 [1975]. Here Article 20 of the agreement specifically deals with compensation received by a retiring or resigning partner for services on cases worked on before and after retirement or resignation. The canon in of itself is a guarantee that the senior partner cannot exercise his power unfairly or inequitably. Finally, an agreement for division of fees between lawyers who are involved in performing services for a client is valid and enforceable even if the fee division is not precisely proportionate to the amount of work performed by each (*Oberman v. Reilly*, 66 AD2d 686 [1st Dept. 1978]; *Jontow v. Jontow*, 34 AD2d 744 [1st Dept. 1970]).

DR 2-108(A) is inapplicable on its face, since it does not apply to situations, as here, involving retirement benefits. The departing partners are not restricted from practicing law. Article 17 of the Agreement is not violative of DR2-108(A) as contended by plaintiffs. Article 17 refers to retiring or resigning partners whether they are active or inactive in the practice of law (See Article 2(A) of Agreement). Retiring or resigning partners are not subject to financial penalties as urged by plaintiffs, but are only required to make contributions for retirement benefits for those partners such as Sincoff and Baumeister, who resigned before plaintiffs. Moreover, such contributions are only from fees earned on matters which plaintiffs took with them.

Plaintiffs' contentions that the retirement provisions (Art. 14, 15 and 17) are not enforceable because they are impermissibly uncertain and indefinite are conclusively refuted by the trial record and there is no need for the court to spell that out here. While these provisions are complicated and somewhat tortuous the testimony of the accountants and attorneys who dealt with and drafted these provisions clearly demonstrates that the provisions are workable. The record also clearly demonstrates that these provisions were workable in the past in determining the retirement benefits of Harry E. Kreindler, now deceased, and for Baumeister. It is of no small significance that according to the testimony of Levy, Phillips and Koenigsberg, no objections were interposed by any of them to the accountants' statements of Harry E. Kreindler and Baumeister's retirement benefits, which were prepared in accordance with the retirement provisions of the agreement. Having failed to interpose any objections the statements of retirement accounts were deemed to be conclusive (Art. 11 of the Agreement). The record is clear that while discussions took place between some of plaintiffs (Levy and Phillips) and other K&K partners concerning the retirement provisions, and memorandum were written making suggestions how to deal with these provisions, at no time were these provisions amended or abandoned. Indeed serious written consideration was given by Levy & Phillips to properly fund the retirement provisions by insuring a cash flow.

Finally, here again, we have a situation where the lawyers involved here, or some of them, drafted or participated in the drafting of the provisions challenged; all affirmed the validity of these provisions over the years, when the Agreement was amended from time to time; and accepted the results of the implementation of these provisions in regards to the retirement or resignation of former K&K partners.

For the foregoing reasons and discussions, plaintiffs' motion which has been treated as a CPLR Section 3211 (7) as well as a CPLR Section 3212 motion, is denied in all respects.

The cross-motions by Sincoff and Baumeister for partial summary judgment must be denied, since there is factual issue raised by plaintiffs' papers as to the accountants' calculation for retirement benefits for the year 1986. This issue for retirement benefits due them under the agreement is referred to a Referee (or Judicial Hearing Officer) to hear any report as was stated in the Court's Memorandum Decision of April 7, 1986. Sincoff's counterclaim is one in equity and his rights and entitlements can be determined in an accounting (Decision, April 7, 1986, p.5) Baumeister's claim is no different.

The special circumstances that persuaded this court to grant a jury trial in the cases in chief, did not create a right of jury trial on the issues involved here. Indeed, these issues were specifically reserved for a reference (Decision, April 7, 1947, p.8-9)

In accordance with a ruling made on the record during the June 19, 1987 oral argument, the cross claims and application made by Sincoff and Baumeister are deemed amended nunc pro tunc to include claim for retirement benefits due under the agreement for year 1986.

In order to preserve an accurate record, Sincoff's cross-motion for further discovery and Baumeister's motion for a declaratory judgment is dismissed as being abandoned or academic.

If all counsel agree, the matter will be referred to a Judicial Hearing Officer under such conditions as are mutually agreed upon, otherwise to an Official Referee. In the event that counsel cannot agree on a reference to a Judicial Hearing Officer then this matter is referred to the Supervising Referee for assignment to a Special Referee to hear and report. In that event, counsel are directed to serve a copy of an order on the Legal Support Office, Room 311, 60 Centre Street, within five (5) days after entry of an order to obtain a hearing date.

Settle order.

Dated: August 28, 1987

MJD
J.S.C.

EXHIBIT "C"

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JOHN L. [illegible]
HOWARD [illegible]
JEROME J. [illegible]
ARNOLD I. BURNS
JOSEPH L. CANNELLA
ERWIN CHEROVSKY
AUSTIN W. D'ATRI
ROGER DuBROFF
RALPH M. ENGEL
GUY R. FAIRSTEIN
WALTER FELDESMAN
MORTIMER M. FELSINGER
STEPHEN R. FIELD
STANLEY GARRETT
IRA G. GREENBERG
ALAN S. HYMAN
HERBERT P. JACOBY
HAROLD I. KAHEN
ARTHUR L. [illegible]

HOWARD L. KLEIN
ASHER B. LANS
SELIG J. LEVITAN
JACK LEVY
MICHAEL S. LICHTENTHAL
JOSEPH E. LOW
GARY L. MADDOCK
RUBIN M. MARCUS
HERBERT L. ORTNER
SAMUEL P. OTTENBACHER
ALLAN A. PINES
DAVID ROSENBERG
LEONARD ROVINS
STUART G. SCHWARTZ
MICHAEL G. SHANNON
PATRICIA COSTELLO SLOVAK
EVAN J. SPELFOGEL
WYNNE B. STERN, JR.
STUART A. SUMMIT
RICHARD A. WILSKER

JUDD BURSTEIN
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NORMAN A. HOWARD
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April 26, 1985

Federal Express

Carl E. Tuerk, Jr., Esq.
Cooper, Beckman & Tuerk
Suite 404 Blaustein Building
One NOrth Charles Street
Baltimore, Maryland 21201

Re: Stanley J. Levy, et al. vs.
Lee S. Kreindler, et al.

Dear Mr. Tuerk:

Our clients, Stanley J. Levy, Steven J. Phillips, Alan J. Konigsberg, Ivan B. Rubin and Donald I. Marlin, have requested that I write to you to explain the nature of their dispute with their former partners at Kreindler & Kriendler.

Enclosed is a copy of the complaint in the action between our clients and their former partners, which is pending in the Supreme Court of the State of New York, County of New York. I trust you will find the complaint self-explanatory but I would note that, essentially, it is our clients' position that a written partnership agreement upon which the defendants rely is not effective to govern their relationships for a variety of reasons, including certain ethical rules, the obviously illusory nature of certain critical provisions and because the agreement was not signed by all of the partners during relevant periods.

The net effect of the pending action would be that the relationship among the partners of Kriendler & Kriendler would be governed by New York State law rather than the agreement. And one effect of that would be that each of the partners would have a specific interest in all of the partnership assets in no way limited by provisions of the written partnership agreement. Thus, our clients would each have a percentage interest in all of the firm's receivables. If the position we have taken prevails, the pre-existing Kriendler & Kriendler firm would be a partnership that had been terminated and would have to be liquidated. Were money to be received by the new Kriendler & Kriendler firm that was attributable to the pre-existing firm and not divided among the pre-existing partners, but used in the on-going business of the new Kriendler & Kriendler firm, our clients would be deprived of their appropriate shares of those monies.

Thus, our client's have requested, and this will confirm that request, that their interests be protected with respect to any amounts due by reason of their or Kreindler & Kreindler's participation in the Baltimore asbestos actions. Specifically, we request on their behalf that any check to be issued be made payable to both Kreindler & Kreindler and Levy Phillips & Konigsberg jointly.

Very truly yours,

Stuart A. Summit

SAS:rl
Enclosure

cc: Stanley J. Levy, et al.

EXHIBIT "D"

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*ALSO ADMITTED IN NEW JERSEY

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(609) 275-0440

April 19, 1985

George N. Tompkins, Jr., Esq.
Condon & Forsyth
1251 Avenue of the Americas
New York, NY 10020

Re: Kreindler & Kreindler Settlements

Dear George:

As you probably know, the Kreindler & Kreindler firm has essentially divided with myself, Alan Konigsberg and three other partners establishing the new firm of Levy Phillips & Konigsberg, and Lee, Marc and three others continuing to practice under the name of Kreindler & Kreindler, with Milt having also resigned from the firm and entering into some of counsel relationship.

As partners in the old Kreindler firm at the time, I and my present partners have an interest in any settlements or judgments that the Kreindler firm may have obtained or will reach in the future with respect to any cases that existed before the separation.

However, information about case inventory and any settlements which have been made since January or any monies which may have been paid to the Kreindler firm in connection with settlements prior to that date has been kept from us. Therefore, I would appreciate it if you could let me know what cases Condon & Forsyth has settled with the Kreindler & Kreindler firm since January 1, 1985 and whether payments have been made to the firm since that date. In addition, each former partner has asserted an interest in the cases that the Kreindler firm was prosecuting at the time of the division. In order to assure that our interests are protected, we would expect that Condon & Forsyth would promptly notify us of any settlements or disposition as they occur and should make all checks payable to our two firms jointly.

Best regards.

Very truly yours,

Stanley J. Levy

wc

Senator **Simon**. The nominee, Mr. Stuart A. Summit——

Mr. **Kreindler**. Pardon me?

Senator **Simon**. Mr. Summit is our next witness here.

Mr. Summit, you are still under oath from your last appearance here. I just mention that for the record. I am sure you are aware of that.

TESTIMONY OF STUART A. SUMMIT, NEW YORK, NY, TO BE U.S. CIRCUIT JUDGE FOR THE SECOND CIRCUIT

Mr. **Summit**. Yes, Mr. Chairman.

Senator **Simon**. You have heard Mr. Kreindler testify. Obviously, you would like to respond here.

Mr. **Summit**. I would, Mr. Chairman. Thank you for giving me the opportunity to do so.

I had not intended to get into any detailed rebuttal because I really didn't see the seemliness of the committee wanting to retry the case of *Levy* v. *Kreindler* or *Kreindler* v. *Levy*.

I do feel, while it is fresh in everyone's mind, however, that I must reply with a degree of detail to one thing that was said. Until I came here today, I understood that essentially Mr. Kreindler was complaining about a letter that I had written. Originally he claimed that all of the letters were at my instigation. Then he learned that I only wrote one, and so I thought that's all we had to deal with.

But, of course, I heard, as did you and Senator Specter, myself accused of complicity in a fraud. And while I'm not at all clear exactly what the fraud is or in what degree I am to be complicitous in it, I should quickly and with specificity deny that. I do.

If I understand Mr. Kreindler's initial charge, it was a failure of my clients to disclose to their then partners that they had a plan to depart the firm at the time they signed a partnership agreement.

And Mr. Stanley Levy, who is one of my clients in that case, a respected member of the New York City bar and a well-known lawyer nationally, is here to confirm, as do I, that I was not consulted on those issues. I gave them no advice on those issues and I did not know what was going on within that firm at that time.

I simply was not asked for any advice in that regard at that time. And as I say, Mr. Levy is here. He kindly came here to be available to the Senate to answer any questions you might have of him, and he has said to me that he can confirm my recollection and he is prepared to take the oath and confirm that point.

Except for that, Mr. Chairman, I really don't want to relitigate the case, and I won't. You have a letter from Justice Michael Dontzin of the New York Supreme Court, who did handle the case throughout, and indeed the entire period of time Mr. Kreindler describes, including the time that these letters of which he complains were written, Justice Dontzin was involved with the case—or not when they were written, but after he had started the proceedings; that is, Mr. Kreindler had.

We had started on our clients' behalf a declaratory judgment and accounting action before Mr. Kreindler started his injunction action. Justice Dontzin had that case, so Justice Dontzin is familiar with the entire story and spent hundreds of hours with all of the parties and all of the lawyers trying to work matters out, trying to resolve legal issues, and ultimately conducting a 6-week trial. So Justice Dontzin's letter to Senator Thurmond, it seems to me, gives you some cause for reassurance on the general points that are being raised by Mr. Kreindler.

You have as well a letter from Sidney Stein that Senator Specter called attention to. I have been informed that that letter was sent. Sidney Stein, contrary to what Mr. Kreindler just said, was his lead lawyer for virtually the entire case.

For the trial itself and just in advance of the trial, a very fine lawyer from Los Angeles, Marshall Morgan, was brought in to be the actual trier of the case to a jury. But up until that time or a short time before that, Mr. Stein had been the lead lawyer.

But be that as it may, Mr. Stein, who is not a personal friend of mine, and did, as he notes, spend about a year of his life arguing with me and others in court, has been kind enough to write to the Senate to suggest that my conduct was entirely professional, and I call your attention to that letter.

Now, when I first read of the charges that Mr. Kreindler was making about certain letters that were written, I really had trouble understanding what he was saying about them, and I thought perhaps that I didn't understand what the ethical question was, and so I asked a very respected teacher of law, Professor Carolyn Gentile, of the Fordham Law School—and there was some reference made to that—to review the situation.

Of course, she does rely on what I told her and the files I showed her, as you would in any formal opinion letter. But I believe that the statements that she does rely on are entirely accurate, and I confirm their accuracy.

Professor Gentile—who teaches professional responsibility at Fordham, is also the chairperson of the New York State Law Revision Commission, a very well-respected lawyer and teacher in New York—has written to me, and I have sent to the Senate, an opinion letter stating that the letters of which Mr. Kreindler complains were entirely within the bounds of professional conduct and not subject to any ethical condemnation.

The Senate also has a letter from the President of the Association of the Bar of the City of New York in which he describes me as the leading advocate within the city bar of mediation and arbitration for lawyer disputes.

And I was indeed—I was one of the authors of a program that now is in effect and which we hope will eliminate the necessity for these terrible litigations among former law partners and the like, and will cut down on the kind of cases—and the emotional cases that they are really cries out for some alternative to the normal court procedure for disputes among lawyers.

I think these statements from essentially neutral people are as effective a response to Mr. Kreindler as I can offer. Anything, of course, I say is me saying it, and this is them saying it.

But I would feel remiss if I didn't address the question of these letters. I'm sorry to take up the time. I know you didn't expect to spend so much time at it. I don't think it is unusual for persons who believe they have an interest in money that is held by someone else to write to the person who is holding the money, the stake-holder, and say I have an interest in that money; please safeguard it for me until I have litigated or established my right.

I really don't think that's unusual conduct. I've certainly seen it done by adversaries of my clients in the past without thinking that some horrible thing was going on. And if you don't think the person who writes that letter is entitled to do so, then you go to court, you seek an injunction, you win it or you lose it.

That seems to be the normal way.

The reason I advised my clients not to write those letters in this case was not because they were some per se wrong or unethical thing, but because I just didn't think it was wise to do so in this case.

We already had a lawsuit pending. We were trying to establish our rights in that lawsuit. I predicted that if these letters were written, Mr. Kreindler would bring an injunction proceeding, as he did, and I advised them that that was not a good format for our effort to vindicate their position with respect to the underlying partnership agreement.

Injunction proceedings are emergency proceedings. Judges have to decide them in a hurry, and they tend to resist delving into sophisticated points, points that require factual or legal development or are highly theoretical.

Therefore, I advised them not to write the letters because I didn't want to have to defend an injunction proceeding, and that was the reason. They nonetheless made the decision to write them. They are five fine lawyers, mature people. They were the clients, I was the lawyer; it was their decision to make. And I, as their lawyer, was obliged to attempt to live with that decision and make the best of it as I could.

At one point of time, I was told that Carl Tuerk, a very well-known lawyer in Baltimore, and a friend of one of my clients, had requested a letter from me asking me to describe the litigation and send him copies of the pleadings, and my clients asked me to reiterate a request they had already made that he hang on to the money, or I guess—excuse me—actually to issue the check jointly.

Tuerk received the letter and brought an inter-pleader action in Maryland, as, of course, he was entitled to do, and paid the money into court. Now, that is the only thing that Mr. Kreindler has referred to that really was my conduct. I did write that letter.

As I said, I wished none of those letters were written just because I didn't want to have to defend an injunction proceeding for the clients, but I know of no wrong in having done so.

Mr. Kreindler, of course, makes broader charges. As to the broader charges, I'm just going to ask you to review my whole career, my whole record. You have more information regarding me than anyone has ever had before, and you will surely be able to determine if the person who served as counsel to the New York State Commission on Judicial Nomination is likely to be the vicious person that I think you have heard described today.

I've served for 9 years in the State of New York assisting in the finding of good judges for our highest court and seeing that the best, if possible, were nominated. I've done other things in my career as well in that field and other fields. I've been blessed with leadership positions by my university and by the Boys Clubs of America.

I thank you. Thank you very much, sir.

Senator SIMON. We thank you.

Mr. SUMMIT. If you have any questions, I would be pleased to answer them.

Senator SIMON. You may, upon examination of the record—which we will provide as quickly as we can, you may wish to add any other comments.

Mr. SUMMIT. Thank you, Senator.

Senator SIMON. Senator Specter.

Senator SPECTER. Well, Mr. Summit, I do not intend to ask you any questions about the issue of fraud which has been alluded to in the absence of Mr. Kreindler's statement which he may produce for us as to what evidence he has.

I do not think it appropriate to start to talk about meetings which were held and conversations which were held until that information is forthcoming. But if there is any substance to what he has to say, there may be an occasion for you to respond when that material is presented.

But on this state of the record, I would not think it appropriate to direct that question to you.

Mr. SUMMIT. Thank you, Senator.

Senator SIMON. And may I suggest to Mr. Levy, wherever he is, that he submit a letter for the record. You have been here to hear the testimony, and that would be helpful to the committee.

Mr. LEVY. I would be happy to.

Senator SIMON. Thank you.

Our hearing stands adjourned.

Mr. SUMMIT. Thank you very much.

[Whereupon, at 3:40 p.m., the committee was adjourned.]

[The following additional material was submitted for the record.]

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June 27, 1988

Honorable Paul Simon
Senate Judiciary Committee
224 Dirksen Building
Washington, D.C. 20510

Re: Nomination of Stuart A. Summit
to the United States Court of Appeals
For the Second Circuit

Dear Senator Simon:

I am writing at your request, to advise the Senate Judiciary Committee of certain facts relevant to the Committee's consideration of the nomination of Stuart A. Summit to the United States Court of Appeals for the Second Circuit.

My former law partner, Lee Kreindler, appeared before the Committee on June 21, 1988 in his continuing effort to delay and obstruct Mr. Summit's confirmation. I am distressed that the litigation in which Mr. Kreindler and I were litigants and which was settled over two (2) years ago should now be resurrected and distorted by Mr. Kreindler solely for personal vindictive purposes.

Mr. Kreindler's charge of fraud is false and totally goundless. The allegation of misconduct that he has asserted against an able and ethical attorney such as Mr. Summit can only be attributed to the bitterness of an unsuccessful litigant who still is not able to accept the fact that his own conduct caused the break up of what had once been one of the most able and respected personal injury firm in the country.

In order to show that Mr. Kreindler's charge of fraud is false and groundless, it is necessary to provide some background about the breakup and dissolution of Kreindler & Kreindler. Unrest at Kreindler & Kreindler had been a fact of life for a number of years before my partners and I served our notices that we were withdrawing. The unrest and dissatisfaction had resulted in four (4) partners and four (4) associates withdrawing and taking a major portion of the practice only a year earlier. By mid 1984, it was well known to Mr. Kreindler and to the other partners that Mr. Phillips, Mr. Konigsberg and I were dissatisfied with the way Mr.

Kreindler was running the firm. Mr. Kreindler knew that we, and other partners were trying to bring about changes in the firm's management because of our concern that Mr. Kreindler's domination was driving the firm toward a financial catastrophe. It was also well known that Mr. Phillips, Mr. Konigsberg and I, as well as other remaining partners were exploring the possibility of leaving the firm, either individually or in groups.

It is against this background that Mr. Kreindler's false allegation must be viewed. Our decision to leave and to dissolve the old Kreindler & Kreindler firm was not finally made until the second week in January, 1985. Until that time, efforts continued to be made to restructure the firm so that the partnership could be continued. Mr. Kreindler's statement that the decision to leave was reached by me and the four other departing partners in early December, 1984 is absolutely untrue.

Mr. Rubin and Mr. Marlin were elected to partnership in Kreindler & Kreindler during the first week of December, 1984 and were advised of their election the following day. Mr. Kreindler and other partners were aware of the internal unrest at the time the decision to ask Mr. Rubin and Mr. Marlin to join the firm. That decision was made by all the partners because they all agreed that their election would be in the best interest of the firm, assuming the firm remained intact. Moreover, that decision was made well before my present partners and I reached the decision to leave.

Mr. Summit knew nothing of this. At no time was Mr. Summit consulted about the Marlin/Rubin partnership vote nor was his advice ever sought on this matter. Mr. Kreindler's claims that Mr. Summit was the architect of this scheme to "deceive" Mr. Kreindler or anyone else is totally baseless.

Neither Mr. Kreindler nor his primary counsel, Sidney Stein nor any other of Mr. Kreindler's lawyers ever accused Mr. Summit of fraud at any time during our litigation. He never raised it before Justice Dontzen who was responsible for the overall litigation or before Justice Meyer who dealt with the narrow issue of whether my partners and I should be enjoined from our efforts to preserve our right to protect our share of fees in cases in which we claimed an interest, particularly where there was a real danger that Mr. Kreindler would cause the monies to be irreparable dissipated. Moreover, as Mr. Kreindler reluctantly admitted during Senator Spector's questioning, Mr. Kreindler never filed any disciplinary charges against Mr. Summit or against me or my partners. And Professor Gentile's opinion letter makes clear that there is simply no basis for such a charge.

Obviously, Mr. Kreindler continues to bear great bitterness toward me and my partners for our rejection of him and "his" firm. That is somewhat understandable, despite the passage of time since he signed the settlement agreement. However, when Mr. Kreindler stoops to distortions and inaccuracies against a fine and able litigator, a respected member of the legal community and fine gentleman, the record must be set straight not only for this Committee and for the Senate but for the reputation of the nominee, Stuart Summit.

Therefore, I hope this letter presents the true facts in perspective and I urge the Committee to confirm Mr. Summit as a Judge of the United States Court of Appeals for the Second Circuit.

Very truly yours,

LEVY PHILLIPS & KONIGSBERG

By: Stanley J. Levy

SJL/mg

cc: Senator Arlen Spector
Stuart A. Summit, Esq.

Committee on the Judiciary

SUPPLEMENTARY STATEMENT

- of -

Lee S. Kreindler

Re Nomination of Stuart A. Summit
to United States Court of Appeals
for the Second Circuit

July 6, 1988

Page

Preliminary Statement.................................. 1.

I. Concealment of Mr. Summit's role, in the circumstances of the partnership election and the signing of the partnership contract, was fraud.................................. 2.

A. Facts.................................. 3.

B. Evidence: Mr. Summit met with LPK prior to the December 6, 1984 partners election meeting and the signing of the agreement by three LPK partners.................................. 7.

C. Evidence: Mr. Summit advised his client to attempt to break the partnership agreement..... 10,

D. Evidence: There was no disclosure to me or our other remaining partners of the meetings with Mr. Summit.................................. 14.

E. Had there been any such disclosure we would not have gone forward with the election of Rubin and Marlin, and their election, without such disclosure, was fraudulent................ 15.

F. The election of Rubin and Marlin and the signing of the partnership agreement by the three LPK partners, after consulting with Mr. Summit, who advised them it was invalid, was fraudulent.................................. 16.

G. Mr. Summit's Claim that the LPK partners were entitled to equal shares in the partnership and 5/11ths of the firm's assets, in the face of the terms of the partnership agreement, the fraudulent election, and the fraudulent signing of the agreement, was itself fraud............ 20.

H. There was concealment of Mr. Summit's role which then materially contributed to the firm's decision to make Rubin and Marlin partners...... 24.

I. Although LPK denied they had made a decision to leave, the evidence suggests the contrary... 26.

II. There were allegations of fraud in the litigation relating in part to Mr. Summit's activities.................................... 27.

III. There was an implied "judicial determination of fraud" in the decision of Judge Myers granting the preliminary injunction.................... 28.

IV. Comments on Judge Dontzin's letter and Mr. Summit's June 21 testimony.................... 29.

CONCLUSION.. 31.

United States Senate

Committee on the Judiciary

SUPPLEMENTARY STATEMENT

- of -

Lee S. Kreindler

Re Nomination of Stuart A. Summit to United States Court of Appeals for the Second Circuit

Preliminary Statement

This supplementary statement is submitted in response to questions raised by Senator Specter at the June 21 hearing.

These questions concern the concealment of Mr. Summit's representation of my former partners when, on December 6, 1984, they proposed and we elected two associates as partners, and thereafter, when three of them signed the partnership agreement (Ex. E).*

Senator Specter, at the June 21 hearing, raised the question of fraud:

> Senator Specter. If he is a party to an active concealment, what you are saying is there is fraud.
>
> Mr. Kreindler. Well, I am saying there was fraud.... (June 21 uncorrected transcript, p.44.)

---

* Exhibits A-D are attached to my statement of June 21. Other exhibits, referred to herein, have been separately bound and submitted to Steven Metalitz, Esq., Chief Nominations Counsel.

Questions were then put to me by Senator Specter about whether I had any evidence of fraud and whether my partners and I had alleged fraud in the litigation. This supplementary statement answers those questions with supporting documentation, and, as suggested by Senator Simon and Senator Specter, comments on Judge Dontzin's letter and Mr. Summit's testimony at the June 21 hearing.

In answering these questions I must point out that this subject is separate and apart from and additional to the thrust of my Statement and initial testimony of June 21. That statement dealt with Mr. Summit's effort to break our longstanding partnership agreement and his conduct in attempting to force us into submission by economic coercion. The election of the two partners is mentioned only tangentially (p.6), and I did not use the word "fraud" until the question was raised by Senator Specter.

I have attempted to review the record. It consists of many thousands of pages of trial transcript and deposition testimony. I apologize for the length of this statement, but there is no way to answer the questions raised without providing documented details. I am indebted to David Wright Esq. of the Stein, Zauderer firm for his assistance in attempting to comb the record.

I.

Concealment of Mr. Summit's role, in the circumstances of the partnership election and the signing of the partnership contract, was fraud.

A. Facts

Stanley Levy, Steven Phillips, and Alan Konigsberg (hereafter Levy, Phillips, and Konigsberg) had been partners in our firm for many years, and had signed our partnership agreement many times (See Opinion of Judge Myers, Ex. A, P. 5).

Prior to December 6, 1984, Levy and Phillips had proposed two associates, Ivan Rubin and Donald Marlin (hereafter Rubin and Marlin), who had been closely associated with them, for partnership in the firm.

A partners meeting was held on Dec. 6, 1984 for the purpose of deciding on the election of new partners. All partners including Levy, Phillips, and Konigsberg, attended that meeting. Levy and Phillips proposed Rubin and Marlin for partnership, stating their long term value to the firm, and they were elected.

Following the meeting, in accordance with our usual procedure, an amendment or "codicil" to the partnership agreement was prepared and dated December 6, 1984. It was signed several days later by Rubin and Marlin and about a week or two later by Konigsberg. All other partners, except Levy and Phillips, had signed the document on or shortly after December 6.(Ex. E). Six weeks later, on January 22, 1985, all five of them, Levy, Phillips, Konigsberg, Rubin and Marlin, resigned from the firm.

At no time during the December 6 meeting or for nine months thereafter until the taking of their depositions was it revealed that prior to the December 6 meeting they had met with Mr. Summit and his partner, John Amabile, at Mr. Summit's office, to discuss their leaving the firm, and that Mr. Summit had advised them that the partnership agreement was subject to attack.

Pursuant to their election and their signing the partnership agreement Rubin and Marlin became partners January 1, 1985. Levy, Phillips, Konigsberg, Rubin, and Marlin then became five of the twelve partners.

On January 15, 1985 Milton G. Sincoff resigned from the firm as a partner and agreed to stay on as counsel.

On January 22, 1985 Levy, Phillips, Konigsberg, Rubin, and Marlin, then constituting five of the eleven partners, gave written notice that they were leaving the firm. Under our partnership agreement their retirement became effective sixty days later, on March 22, 1985. I was told that they had retained Mr. Summit as their attorney, that he had advised them that the partnership agreement was invalid and unenforceable and I should negotiate their departure with him.

They remained physically in our office until mid March, when they left to start their new firm, "Levy, Phillips, and Konigsberg" (hereafter "LPK"), taking numerous clients and files with them.

Several actions were then started in various courts concerning substitution of attorneys and repayment to our firm of disbursements we had advanced on those cases.

With the starting of those cases Mr. Summit, on March 21, 1985, commenced an action (LPK vs K&K) for a declaratory judgment that the K&K partnership had been dissolved; that the partnership agreement was null and void; that "five/elevenths of the ...assets of K&K belong to plaintiffs;" and that a receiver should be appointed to account for and distribute the assets of K&K. (Declaratory Judgment complaint, Ex. F. See Paragraph 17 and

Wherefore clauses).

On April 19, 1985 the "freeze" letters referred to in my Statement of June 21 were sent out by Stanley Levy on all or most of our cases advising recipients not to pay us anything they owed unless the names of Levy, Phillips and Konigsberg were jointly on the checks. (See. for example, Ex. D) and on April 29 Mr Summit wrote a similar letter to Carl Tuerk, Esq. (Ex. C).

On April 29, 1985 we started an action for an injunction, and for compensatory and punitive damages, and we moved for a preliminary injunction. Our motion was assigned to Judge Alan Murray Myers who concluded there was a probability of success in our action and granted the motion with a very strong opinion castigating and enjoining the effort to cut off our cash flow. (Ex. A)

In the LPK action for declaratory judgment, brought by Mr. Summit, we moved for summary judgment, based upon our partnership agreement. This was assigned to Judge Michael Dontzin. Since one of Mr. Summit's allegations was that we had abandoned the agreement by course of conduct, Judge Dontzin denied our motion for summary judgment on the ground that a triable issue of fact was presented.

Judge Dontzin ordered that our action for an injunction and damages be consolidated with the LPK declaratory judgement action pending before him, and he thereafter ordered the beginning of discovery.

In September and October, 1985, we took the depositions of Levy, Phillips, and Konigsberg, and learned for the first time, that Mr. Summit had been consulted by them and met with them prior to the partnership election and the signing of the partnership agreement codicil, and that he advised them the agreement might be invalid.

On April 7, 1986, Judge Dontzin, on motion by Mr. Summit, severed the two actions and directed that the LPK action for declaratory judgment go forward only on the narrow factual question of abandonment by course of conduct. This went to trial in April and May, 1986 before Judge Dontzin and a jury. The trial lasted for six weeks until the entire case, and all other related issues, were settled just before jury charge.

Subsequently, in related litigation between Levy, Phillips, and other previously retired partners, Judge Dontzin upheld the validity of the Partnership Agreement.

B. Evidence: Mr. Summit met with with LPK prior to the December 6, 1984 partners election meeting and the signing of the agreement by three LPK partners.

Phillips testified before trial:

> "Q. You had already met with Stu Summit prior to the afternoon of December 6th, hadn't you?
>
> A. I can't be certain about that, but I think that the answer is yes.
>
> Q. And that was yourself, Levy, Konigsberg, Moller, Summit, Amabile?
>
> A. At that first meeting, I think so.
>
> Q. Anyone else?
>
> A. No.
>
> (Phillips Deposition, October 17, 1985. Ex. J).

During the trial Phillips testified under cross examination that he first saw Mr. Summit "some days before this December 6th meeting, it might have been the end of November too," and the meeting lasted an hour or an hour and a half. (Trial transcript, p. 554, Ex. K). Levy testified that the meeting lasted "An hour and a half, two hours." (Levy deposition, September 19, 1985, Ex. L, p. 206).

In answers to interrogatories dated November 21, 1985 Phillips and Konigsberg admitted attending two meetings with Mr. Summit and his partner, John Amabile in December, 1984. They said they had no independent recollection of the dates, but they had been shown a Burns, Summit computer printout which shows meetings on December 5 and December 19, 1984, and they had no reason to doubt those dates. (Ex. G, Interrogatories 9 and 10.)

Mr. Summit produced his computer printout before Judge Dontzin on December 6, 1985. The first meeting with the Levy, Phillips, and Konigsberg clients shown there was was December 5, 1984, the day before the partnership election ! (Court transcript, December 6, 1985, Ex. H, pp. 113-116.)

Konigsberg testified in his deposition dated October 9, 1985 that he had discussed leaving the firm with Levy and Phillips and another partner, Marc Moller, in November, 1984 (Konigsberg deposition October 9, 1985, Ex. I, p. 47).

He testified that prior to the time he signed the partnership agreement codicil he had consulted with counsel, Mr. Summit, who said it was invalid. (Ex. I, pp 39-40, 56). He said:

> I don't know how many times we met with Mr. Summit prior to that day. I believe at least once, maybe more. At least once. (Ex. I, P.40)

Mr. Konigsberg did not recall the date of the first meeting with Mr. Summit. (Ex. I, p. 41.).

I find no place in the record where any of the Levy partners or Mr. Summit himself recalled that December 5, 1984 was their first meeting or consultation, but a meeting certainly took place that day. (See Court transcript, December 6, 1985, Ex. H, pp. 113-117, and Mr. Summit's comments, Trial transcript, Ex. M, p. 2127-8.)

C. Evidence: Mr. Summit advised his client to attempt to break the partnership agreement.

The depositions that preceded the trial are replete with objections made by Mr. Summit's associates, and directions not to answer, based on attorney-client privilege. With the exception of one meeting attended by Marc Moller, a partner who later chose to stay with the firm, objections and directions not to answer were made to most questions relating to advice given by Mr. Summit.

Despite this some testimony was obtained. Rubin testified that prior to signing the codicil, "There had already been, to my recollection, an opinion by Stuart Summit's firm or someone in the firm had written a memo about whether or not the document was, in fact, legal, under the law of New York." (Deposition of Ivan Rubin, October 26, 1985, Ex. N, p. 77). He testified:

> "Q. Did you have the opinion from Stu Summit's firm that the partnership agreement was not enforceable at that meeting?
>
> MR. KING: Objection to form.
>
> A. I heard about the memo. I'm not sure I ever saw it at that time or at any time. I might have. I honestly don't know.
>
> Q. Was the opinion of the firm that the partnership agreement was not enforceable as set forth in that memo?
>
> MR. KING: Objection to the question.
>
> Direction not to answer.
>
> * * *
>
> Q. Was there any discussion at that meeting concerning the opinion by Stuart Summit that the partnership agreement was unenforceable?
>
> A. I believe so.
>
> Q. What was that discussion?
>
> A. My recollection, not having ever seen the opinion, to my recollection, was that everybody in the room felt that the agreement was unenforceable.
>
> (ibid, pp. 78, 80, 83-84.)

In cross examination at the trial Konigsberg testified that the first meeting with Mr. Summit was before the December 6th partners' meeting, and that he came to the conclusion at that meeting that the partnership agreement was terminated. He did not, however, say anything to that effect to me or other partners at that meeting. (Trial transcript, Ex. O, 1828-1831).

At P. 2126 of the trial transcript Konigsberg testified:

> Q. (Continuing) You testified in substance that the first time that you concluded the entire partnership agreement was abandoned was during a meeting with Mr. Summit and Mr. Amabile, is that correct, in substance?
>
> A. The written document, yes, sir.
>
> Q. And you told us on Monday also that, that meeting -- by the way, that occurred in Mr. Summit's office?
>
> A. Yes.
>
> Q. You told us that on Monday in this courtroom that the meeting with Mr. Summit and Mr. Amabile and Mr, Phillips and Mr. Levy was before the partners' meeting, at which the Kreindler & Kreindler partners voted to make Mr. Rubin and Mr. Marlin partners, is that correct?
>
> A. You left out Mr. Moller; and with that exception the answer is correct, yes, sir.
>
> Q. He was there also?
>
> A. Yes, sir.
>
> (Trial Transcript, Ex. M, p. 2126)

Breaking a lawyers' partnership agreement itself, or counselling other lawyers to do so, even in the name of an assumed breach of the canons of ethics, which Mr. Summit had alleged, is probably itself a violation. Opinion 535 of the Committee on Professional Ethics of the New York State Bar Association provides:

> "But the situation presented raises entirely different considerations. Where a lawyer enters into an agreement with another lawyer and benefits therefrom, a refusal thereafter to honor that agreement cannot be defended in the name of professional ethics. Neither the former Canons nor the Code would shield a lawyer from performance of an agreement where the claimed violation were not unlawful apart from the Code.
>
> * * *
>
> Such a determination rests on the value placed by the former Canons and the Code on a lawyer's integrity. See, e.g., Canon 1, EC 8-7 and EC 9-1. Integrity is the foundation of the profession. To permit a lawyer to avoid an obligation by wrapping himself in the Code erodes that foundation.
>
>> 'A very great part of a man's comfort, as well as of his success at the Bar, depends upon his relations with his professional brethren. With them he is in daily necessary intercourse, and he must have their respect and confidence, if he wishes to sail along in smooth waters. He cannot be too particular in keeping faithfully and liberally every promise or engagement he may make with them. One whose perfect truthfulness is even suspected by his brethren at the Bar has

> always an uneasy time of it. He will be constantly mortified by observing precautions taken with him which are not used with others.'— Sharswood, Professional Ethics, p. 73, cited in Drinker, Legal Ethics, 194 (1953).
>
> As illustrated by several examples given in Drinker (at pp. 194-195, agreements and representations by lawyers, not violative of the law, must be scrupulously honored. Trustworthiness, fairness and candor affect not only a lawyer's own experience at the Bar but also public confidence in the profession.
>
> These sentiments find expression in DR 1-102(A)(4), which provides that a lawyer should not engage in conduct involving dishonesty, fraud, deceit or misrepresentation. Reneging on an agreement in the name of professional ethics is simply inconsistent with honesty and fair dealing. See also, Wackstein, Maintaining the Integrity and Competence of the Legal Profession, 48 Tex. L. Rev. 267, 275 (1970) (suggesting that the proscribed conduct evidences characteristics of dishonesty, faithlessness and inability to exercise fiduciary responsibility, and therefore bears directly upon fitness to practice)."
>
> (Opinion letter of Professor Monroe H. Freedman, with NYSBA Ethics Opinion 535 attached, Ex P.).

D. Evidence: There was no disclosure to me or our other remaining partners of the meetings with Mr. Summit.

There was absolutely no disclosure to me or my partners of the meetings with, consultations with, and advice given by Mr. Summit at the time of the partnership election or the signing of the codicil by Konigsberg, Rubin, and Marlin.

Under cross examination at the trial Konigsberg testified:

Q. Then when the discussion turned to the merits of whether to invite one or both of them into the partnership, did you say something?

A. About what?

Q. About whether, in your view, they should be made partners. Did you say something about that?

A. Yes.

Q. You supported them for partnership in substance?

A. Yes.

Q. And you held up your hand and voted for both of them to be partners, correct?

A. Yes.

Q. And at the time that you did that, you had concluded the day before that the partnership agreement did not exist, it was abandoned, terminated, correct?

A. Yes.

* * *

Q. Did Levy, Phillips or you say, to the partners, in words or substance, "I don't think the partnership agreement is valid, we have just gotten a legal opinion, and we met with the lawyer, and the partnership agreement is invalid or abandoned.

Did you say that in words or substance to the rest of the partners who were not at the meeting with Mr. Summit?

A. I did not, no, sir.

Q. Did Mr. Levy?

A. Not at that meeting, that I recall.

Q. Did Mr. Phillips?

A. Not in those words, no sir.

(Trial Transcript, Ex. Q, pp. 2140-2143. See also Trial Transcript, Ex. O, pp. 1828-1831).

E. Had there been any such disclosure we would not have gone forward with the election of Rubin and Marlin, and their election, without such disclosure, was fraudulent.

Rubin and Marlin were closely allied with Levy and Phillips, and would have left and did leave the firm with Levy and Phillips. Levy deposition, September 18, 1985, Ex. R, p. 97.

We would not have elected Rubin and Marlin partners if we had any idea Levy and Phillips were leaving.

F. The election of Rubin and Marlin, and the signing of the partnership agreement by the three LPK partners, after consulting with Mr. Summit, who advised them it was invalid, was fraudulent.

Konigsberg testified that he (and Marlin and Rubin) signed an agreement that he thought, after talking to counsel Summit, might be invalid. He testified that it was "the collective decision that we would all sign." He testified:

Q. As I understand your testimony, you were signing an agreement that you thought might be invalid; is that right?

A. Yes.

Q. That's a deceit, isn't it?

MR. KING; Objection as to form.

A. Well --

Q. Did you say anything to me or anybody else in the balance of the partners to the effect that you thought you might be signing an invalid agreement?

A. I certainly indicated that to Stanley and to Marc and to Steve. I don't know if I indicated it to anybody else.

Q. What did Steve, in the discussions you had prior to your signing, what did Steven recommend to you? What did he tell you to do?

A. It was our collective decision that we would all sign.

Q. So that Stan Levy and Steve Phillips participated with you in that decision?

A. We had all decided that we would sign the amendment.

Q. All of you knowing about prior discussions with counsel and your own discussions among yourselves about the possibility of the agreement being invalid?

MR. KING: What's the question?

THE WITNESS: Could I hear it back, please.

(The pending question was read.)

MR. KING; Objection as to form.

A. We had prior discussions with counsel about the possibility of the agreement being invalid and we decided to sign.

> Q. And it was a collective decision?
>
> A. Yes.
>
> (Konigsberg deposition, October 9, 1985, Ex. I, pp. 58-59).

At the trial, under cross examination by Mr. Morgan, Konigsberg virtually admitted the fraud:

> "Did you meet with Mr Rubin and Mr. Marlin at Stan Levy's house before you were presented with partnership amendment signed December 6, 1984?
>
> A. I think Mr. Rubin was there.
>
> Q. How about Mr. Marlin?
>
> A. I don't believe he was.
>
> Q. Are you uncertain?
>
> A. I don't think he was there.
>
> Q. Did all of you who were there agree that you would sign the amendment?
>
> A. Yes, sir.
>
> Q. Did you all agree it wouldn't mean anything?
>
> A. Yes, sir.
>
> Q. Did Mr. Rubin or Marlin, whichever one was there, agree?
>
> A. I just said that we all agreed.

Q. And wasn't this the object of all of this, to file this complaint so that you would claim there was no agreement, because it had been abandoned, and that you could then receive 5/11ths of the assets of Kreindler & Kreindler?

MR. SUMMIT: Objection.

THE COURT: Overruled.

A. No.

Q. That would be the effect of it, though, would it not, if you could convince anybody that this was abandoned?

MR. SUMMIT: Objection, your Honor.

THE COURT: Overruled.

MR. SUMMIT: This is for the Court.

THE COURT: No.

He asked this witness if that is what his opinion is.

A. I don't know what the legal effect would be.

Q. You read your complaint?

A. Yes.

Q. Have you read paragraph 17?

A. Paragraph 17 here doesn't seem to --

THE COURT: We have two different --

Q. Here, look at this.

Why don't you read it out loud?

A. "Plaintiffs contend and hereby so allege that by reason of the foregoing, five elevenths of the pre-January 22, 1985 assets of Kreindler & Kreindler belong

> to plaintiffs. These assets include cash investments, accounts receivable fees, and disbursements to be received on cases then handled by the partnership and pursuant to the terms of a certain agreement dated June 13, 1983, between Kreindler & Kreindler and the members of the firm of Bernstein, Litowitz, Berger and Grossman; library, furniture and fixtures, and the lease for the premises of 100 Park Avenue, New York, New York."
>
> Q. That is still your position, isn't it?
>
> A. That's one of them, yes.
>
> (Trial transcript, Ex. S, pp. 1893-1895).

Marlin testified that he had not met Mr. Summit as of the time he signed the codicil, but that "probably Levy, probably Phillips, probably Konigsberg" had told him they had received legal advice in regard to signing the codicil. (Marlin deposition, October 11, 1985, Ex. T, pp. 87-95). This contrasts with Mr. Summit's testimony at the June 21 hearing that he gave no advice on this subject (p. 55). Marlin said:

> Q. Did anyone tell you that they had received legal advice in regard to executing that codicil?
>
> A. I think so.
>
> Q. Who was that? It was Levy, wasn't it?
>
> A. It was any number of people.
>
> Q. Who are any number?
>
> A. Probably Levy, probably Phillips, probably Konigsberg; Marc might have even said something, Marc Moller.

> Q. About receiving legal advice in connection with signing that codicil?
>
> A. Certainly about signing it. I don't know if we talked about legal advice --
>
> * * *
>
> Q. Levy, Phillips & Konigsberg, your testimony is that they told you what some legal advice had been in regard to the effect of signing that codicil, correct?
>
> A. Yes, but I don't know when.
>
> (Marlin deposition, October 11, 1985, Ex. T, pp. 88, 90).

G. Mr. Summit's Claim that the LPK partners were entitled to equal shares in the partnership and 5/11ths of the firm's assets, in the face of the terms of the partnership agreement, the fraudulent election, and the fraudulent signing of the agreement, was itself fraud.

In his complaint, on behalf of LPK, Mr. Summit took the position that LPK, by virtue of the election of Rubin and Marlin to partnership, were entitled to 5/11ths of the firm's assets. Paragraphs 17 and 18 of that complaint allege:

> "17. Plaintiffs contend, and hereby so allege, that by reason of the foregoing, five/elevenths of the pre-

> January 22, 1985 assets of Kreindler & Kreindler belong to plaintiffs. These assets include cash; investments; accounts receivable; fees and disbursements to be received on cases then handled by the partnership and pursuant to the terms of a certain agreement dated June 13, 1983 between Kreindler & Kreindler and the members of the firm of Bernstein, Litowitz, Berger and Grossman; the library, furniture and fixtures of the partnership; and the lease for the 18th floor of premises 100 Park Avenue, New York, N.Y.
>
> 18. Plaintiffs have demanded of defendants that they account for and pay over to plaintiffs their rightful share of the pre-January 22, 1985 assets of Kreindler & Kreindler, and defendants have rejected that demand."
>
> (Summit's Complaint dated March 21, 1985, Ex. F).

This claim was wholly at variance with the Partnership Agreement and the practices of the firm. Under the Partnership Agreement profit sharing was determined by the senior partner. In practice the determination was made after extensive input from all partners, and a democratic system of mutual evaluation of relative contributions. The firm had a continuing existence and would not dissolve in the case of resignation of partners, and retirement benefits were based on past profit sharing percentages. (See Ex. A, Opinion of Judge Myers, excerpts from Partnership Agreement, Pp 6-7).

The trial before Judge Dontzin was limited by his Order of April 7, 1986 to the question, raised by Mr. Summit, of whether the partnership agreement was abandoned by course of conduct.

The Court did, however, permit some questions on the issue of why the Levy lawsuit was brought.

Mr. Konigsberg was asked about this claim by Judge Dontzin and he said the language was not his:

> THE COURT: Does this paragraph in substance say that you -- as one of your claims in this lawsuit -- that you are asking that all of the assets of Kreindler & Kreindler, as of January 21, the day you resigned, you claim five-elevenths belong to you, Mr. Levy, Mr. Phillips, Mr. Rubin and Mr Marlin?
>
> THE WITNESS: I didn't write that language. And I read it out yesterday. That's what that language says, and that's one of the claims.
>
> (Trial transcript, Ex. U, p. 2090)

Mr. Summit's responsibility for pleading this claim thus seems clear. Konigsberg was then asked on cross-examination:

> Q. What is your understanding in that regard concerning sharing in the assets of Kreindler & Kreindler as of the time you resigned?
>
> A. I have no understanding as to that subject, sir.
>
> Q. Now with regard to the five shares, five-elevenths, that is about 45 percent, roughly, that you claim of the assets of the Kreindler & Kreindler firm for the sharing by you and your four other partners, correct?

A. Five-elevenths is about 45 percent, I think that's right.

Q. And that is what you claim to be shared by you and the four other partners in your firm, right, one-eleventh to each of you?

A. That's what this document says.

Q. That is what you understand it to mean?

A. I already told you that.

Q. Now Donald Marlin and Ivan Rubin were partners in the firm for three weeks before they resigned; is that right?

A. Yes, sir.

Q. And so in this lawsuit you are claiming, as one of your claims based on your understanding, that Mr. Marlin is entitled to one-eleventh, and, in addition, Mr. Rubin is entitled to one-eleventh of all of the cash and assets of the Kreindler & Kreindler firm based on their three-weeks service as partners, correct?

MR. SUMMIT: Objection, your Honor. May I make a record at this point.

THE COURT: Sustained, sustained. You made your point. Let's move along.

The jury is instructed that the purpose of this testimony is on the narrow issue of what the motivation was in the lawsuit claim that the agreement in part or in whole was abandoned.

(Trial transcript, May 6, 1986, Konigsberg, Ex. U, pp. 2090, 2092-3).

The purpose of the Levy claim was confirmed by Phillips in cross examination by Mr. Morgan during the trial:

Q. And you say if this partnership agreement is abandoned then the five of you are entitled to 5/11ths of the assets of Kreindler & Kreindler, that is what your complaint says, does it not?

A. That is one of many different alternative types of relief we sought.

> MR. SUMMIT: If your Honor please --
>
> THE COURT: I am going to instruct the jury that you are not to be concerned with the result, if any may come, if you decide that this agreement has been abandoned. What will be decided in another matter in another way. But I did permit the witness to answer the question because I thought you ought to know what their plan was. He has answered.

* * *

A. Well, that's when he [Marlin] was voted in. I put him up --

> THE COURT: Yes or no.
>
> THE WITNESS: The answer is no then, I didn't put him up on December 6th, it was a little bit earlier.

Q. When was it?

A. Sometime in November, I think.

Q. Did Mr. Levy put up Mr Rubin?

A. Yes.

Q. Now you knew if you left Kreindler & Kreindler Mr. Marlin would follow you, isn't that true?

A. I suggested it, yes.

(Trial Transcript, Phillips, Ex. V, pp. 546-7).

Marlin's testimony, under cross examination at the trial, also indicates the "5/11ths" claim was Mr. Summit's idea. (Trial transcript, Ex, W, pp. 2195-6).

H. There was concealment of Mr. Summit's role which then materially contributed to the firm's decision to make Rubin and Marlin partners.

We don't know what if any part Mr. Summit played in concealing his role prior to the partnership election of December 6, 1984 and the signing of the Agreement the next week by Konigsberg, Rubin, and Marlin, after his advice that the agreement was ineffective. Except for one meeting attended by Marc Moller, Mr. Summit and his associates prevented answers to virtually all questions about advice they gave, on the ground of attorney-client privilege.

There is no doubt, however, that Mr. Summit was retained prior to the election meeting. Mr. Levy testified in his deposition that at the first meeting with Mr. Summit, prior to the partners'election meeting, retainer arrangements were discussed and Mr. Summit agreed to charge them his usual hourly rate. (Levy deposition, September 19, 1985, Ex. L, p. 216.)

There is also no doubt that the concealment materially affected our decision to add Rubin and Marlin as partners. There is no way we would have done that if we had known of the meeting with Mr. Summit and his advice that the Partnership Agreement had been terminated.

Marlin testified that Mr. Summit advised his clients on the signing of the agreement, and he must have known about the election. "Course of conduct", after all, was the basis for attempting to invalidate the Partnership Agreement, so he must have gone into the facts.

There is no question that the concealment of his role led us to add Rubin and Marlin as partners.

I. Although LPK denied they had made a decision to leave, the evidence suggests the contrary.

Although Levy denied that a decision to leave had been made at the time of the partners' election meeting (Levy deposition, September 19, 1985, Ex. L, pp. 198, 202, 203, 204), the facts strongly suggest the contrary. Konigsberg had already done a space need analysis and financial projections and within ten days, Levy and Phillips visited Citibank to discuss financing the new firm. (Rubin deposition, Ex. Y, p. 103; Levy deposition, September 18, 1985, Ex. X, pp. 113-118).

Mr. Summit hardly discouraged their departure from our firm. At that first meeting Mr. Summit told the Levy group that he recalled a prior case he was involved in where a partnership agreement had been set aside on the ground it was contrary to various provisions of the canons of ethics. (Levy deposition, Ex. L, pp. 204, 223-224.)

Whether or not a final decision had been made, that is not the key question on the issue of fraud. There was a knowing failure to disclose facts concerning their activities that would have precluded the election and the addition of Marlin and Rubin as partners.

II.

There were allegations of fraud in the litigation relating in part to Mr. Summit's activities.

Fraud was specifically alleged in our complaint in the action against LPK for an injunction, compensatory, and punitive damages. (See Complaint, Ex. Z, ¶37, and Reply Affidavit of Lee S. Kreindler, Ex. AA, p. 15.) That action arose directly out of the sending of the "freeze" letters. When it was started on April 29, 1985 we didn't know about Mr. Summit's retainer prior to the partnership election and the signing of the Agreement. That information came to light in September when we took the LPK depositions.

We did raise the question at the trial, however, on the issue of LPK's motivation in starting their declaratory judgment action to void the partnership agreement.

III.

There was an implied "judicial determination of fraud" in the decision of Judge Myers granting the preliminary injunction.

At page 45 of the transcript of the June 21 hearing Senator Specter asked me if there had been a judicial finding of fraud in our litigation, and I answered that I thought that Judge Myers decision on granting our preliminary injunction was such a judicial finding. I have now had an opportunity to review our complaint and supporting papers, as well as Judge Myers' decision, and I reiterate my conclusion that there was at least an implied judicial finding of fraud.

Judge Myers said:

> "What the Levy patners seek is in reality an attachment of K&K funds without a court order.
>
> * * *
>
> The issue before me is a narrow one. Whether the Levy partners are entitled to the partnership accounts receivable and to interfere with or prevent their collection by the partnership. The answer is clear and unequivocal. They are not and cannot.
>
> * * *
>
> The individual partners do not even have a colorable claim to the K&K accounts receivable. Without the unfettered cash flow from the accounts receivable K&K would be unable to meet its liabilities to creditors including clients who have prior claims to partnership assets than do the partners. It would also be unable to meet its liabilities to its partners. Cash flow is the life blood of K&K business. A stoppage may cause its demise. It would be irreparably injured. In addition, I find that there is a likelihood that K&K will succeed on the merits at the trial of this action; and that equity is with the K&K partnership.
>
> Accordingly the plaintiff's motion for a preliminary injunction against the Levy partners is granted.
>
> (Exhibit A, pp. 4, 9-10.)

The preliminary injunction, and the underlying complaint arose directly out of the sending of the "freeze" letters by Mr. Levy and Mr. Summit. The withholding of money by Mr. Tuerk, who was the recipient of the Summit letter, is specifically mentioned at p. 3 of Judge Myers' Opinion.

The injunction and the underlying action did not, however, arise out of the concealment of Mr. Summit's role prior to the election of Marlin and Rubin and prior to the signing of the partnership agreement codicil of December 6, 1988. In fact, we were not even aware of that at the time. That information did not surface until the taking of the LPK depositions in September and October, 1985.

Furthermore, that action did not go to trial. As previously indicated, in April, 1986 Judge Dontzin, in April, 1986, stayed all aspects of the litigation except for the narrow issue of whether the partnership agreement had been abandoned by course of conduct. All aspects of the litigation were settled prior to jury charge in that case. Consequently the fraud issue never reached trial and was not considered by Judge Dontzin.

IV.

Comments on Judge Dontzin's letter and Mr. Summit's testimony.

With respect to Judge Dontzin's letter of June 14, 1988, which I had not seen at the time of my testimony, I would simply point out that the issue of the coercive "freeze" letters, which I dealt with in my earlier statement, as well as the issue of concealment of Mr. Summit's role prior to the partnership election and the signing of the partnership agreement codicil, were not directly presented to Judge Dontzin.

The issue of coercion was presented to Judge Allen Murray Myers and resolved in his decision and opinion, Ex. A, which speaks for itself. While it is true that that underlying action was then consolidated with the declaratory judgment action before Judge Dontzin, it did not go to trial. Rather, it was subsumed in the overall resolution of all outstanding disputes when the case was settled. Later, in related litigation, Judge Dontzin upheld the validity of the Partnership Agreement.

Finally, I would like to comment on Mr. Summit's testimony, at page 58, that "The reason I advised my clients not to write those letters in this case was not because they were some per se wrong or unethical thing, but because I just didn't think it was wise to do so in this case."

This appears to me to be quite at variance with Mr. Summit's testimony before this Committee on April 21, 1988 when he said, at page 33, "...I felt that as a legal matter, unfortunately, they were not able to do what they did and advised against it...."

Mr. Summit also testified, on April 21:

> "...I advised our clients not to write those letters. I told them that I thought it very likely that if they did wrote those letters they would be the subject of an injunction, and unfortunately my prediction was correct."

Injunctions are granted not because something is "unwise", but because something is illegal, and Mr. Summit recognized it at p. 33.

I read Mr. Summit's testimony of April 21 as acknowledging the impropriety of the freeze letters. When asked by Senator Leahy if he had sent out such letters himself he said:

> "Mr. Summit. No, I did not. Senator. They sent those letters themselves. We would not have sent those letters and we did not."

As pointed out in my statement of June 21, there is no significant distinction between the letter Mr. Summit himself later sent out and those sent out by his clients. (Lee S. Kreindler Statement, June 21, 1988, pp. 5-8).

CONCLUSION

I apologize for the length of this statement. I felt, however, that Senator Specter was entitled to documented answers to his questions, and, unfortunately, the source materials are many and voluminous.

I do not believe that Mr. Summit has the requisite respect for the law to qualify him as a judge. He demonstrated in my case an attitude that the legal process may be used as an instrument of coercion. He failed to act with the high ethical standards I would expect of a judge. A judge's sense of justice must be above reproach, and his past conduct beyond criticism.

Lee S. Kreindler

KREINDLER & KREINDLER
100 PARK AVENUE
NEW YORK, N.Y. 10017-5590
(212) 687-8181

CABLE "KREINDLAIR NEW YORK"

TELEX: 14-8305

TELECOPIER (212) 972-9432

HARRY E. KREINDLER (1919-1984)
LEE S. KREINDLER
PAUL S. EDELMAN
MELVIN I. FRIEDMAN
MARC S. MOLLER
FRANCIS G. FLEMING*
STEVEN R. POUNIAN
JAMES P. KREINDLER

MILTON G. SINCOFF
DONALD DREW GOLDBERG
STANLEY D. BERNSTEIN
COUNSEL

ARTHUR H. ROSENBERG
DAVID C. COOK
DAVID BEEKMAN
MARYANN RYAN
HENRY A. GLUCKSTERN†
LORI B. LASSON
NOAH H. KUSHLEFSKY
DANIEL M. KOLKO

*ALSO ADMITTED IN NEW JERSEY
PENNSYLVANIA AND ARIZONA
†ALSO ADMITTED IN NEW JERSEY

August 25, 1988

Steven J. Metalitz, Esq.
Chief Nominations Counsel
United States Senate
Committee on the Judiciary
224 Dirksen Building
Washington, D.C. 20510

Re: Nomination of Stuart A. Summit to the
United States Court of Appeals for the Second Circuit

Dear Mr. Metalitz:

Thank you for sending me the Amabile/Levy responses to my supplemental statement of July 6, 1988 and for the suggestion that a reply from me could be included in the record before the Senate votes on this nomination.

In light of the statements of Messrs. Amabile and Levy, my position is:

A. My charge that Mr. Summit utilized the legal process as an instrument of coercion still stands, without reservation or limitation.

The freeze letters were sent out, including one signed by Mr. Summit himself (although he denied that, at first, to Senator Leahy). His attempt to distinguish his letter from the others was specious.

This attitude of mind toward the use of the legal process disqualifies him for judgeship, in my opinion.

B. Senator Spector's questions concerning fraud.

In answer to Senator Spector's questions I testified that Mr. Summit had been retained by LPK; had consulted with them before our partnership election and before the signing of our Partnership Agreement by three of his clients; and that his role had been concealed from us.

Senator Spector asked if such concealment wasn't "fraud" and I said yes, I thought so. Senator Spector asked if I would furnish evidence.

On July 6, 1988 I supplied a 34 page supplementary statement of facts with supporting exhibits, mostly testimony from depositions and trial, and Ethics Opinion 535 holding it is unethical for a lawyer to attempt to break a contract.

In response to that Messrs. Amabile and Levy wrote to the Committee, agreeing that Mr Summit was retained and consulted prior to our partnership election and signing, but denying that the upcoming election and signing were discussed with Mr. Summit. Mr. Levy says also that a decision to leave the firm had not yet been made by them.

With respect to the latter, as indicated by the record previously supplied to the Committee, there is evidence they had looked for office space in advance of the partnership election. In addition, they had retained an architect to lay out the proposed space the preceding summer (see attached affidavit of Messrs. Kleiman and Freidin.) It is undisputed that they had prepared, with the help of an accountant, a projection of income and expenses for their new firm which they presented to Citibank in December in support of a loan application. The loan was granted by the bank in January, a few days before they gave notice they were resigning from our firm.

Thus, Mr. Levy's statement to Senator Simon that "our decision to leave...was not finally made until the second week in January 1985" may be technically correct, but it is highly misleading. The record shows that at least a tentative decision was made before the partnership election, contingent perhaps on getting bank financing, and that it was concealed from us. As I said in my Supplementary Statement, we would not have elected Rubin and Marlin to partnership if we had any idea Levy, et al., and they were thinking of leaving the firm.

Efforts by us to probe discussions with Mr. Summit were rebuffed by objections based on attorney client privilege. Efforts to get the notes of Mr. Summit and Mr. Amabile were resisted by them. When the Court ordered production Messrs. Summit and Amabile said they had kept no notes. That lacks credibility.

Nevertheless, in light of the square denial, by Messrs. Levy, Amabile, and Summit that the election and signing had been discussed with Mr. Summit, I withdraw the conclusion which might be inferred from my testimony at pp. 44-46 that Mr. Summit himself (as distinguished from from Mr. Levy and his other clients) were guilty of fraud in concealing his role. I believe the conduct of Mr. Levy and my other former partners, in concealing their retaining and counseling with Mr. Summit, was fraud, but I have no evidence that Mr. Summit was told about the partnership election or the signing of the amended agreement, as probable as that may appear to have been.

C. In all other respects I reaffirm my testimony and statements to the Committee.

Specifically, Mr. Summit's use of the coercive "freeze" letters was unethical and he admitted doing so. The attack on our partnership agreement was, as clearly held by Opinion 535 unethical and wrong. It was also contrary to the law and the facts, as ultimately held by Judge Dontzin. I do not believe Mr. Summit is qualified to be on the Court of Appeals.

I would appreciate your entering this letter in the record.

Respectfully yours,

Lee S. Kreindler

c.c. Senator Arlen Specter
Senator Paul Simon
Senator Howell Heflin

Attachments: Kleiman and Freidin Affidavits

Via Federal Express
Airbill No. 8886590355

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

---------------------------------------x

STANLEY J. LEVY, STEVEN J. PHILLIPS,
ALAN J. KONIGSBERG, IVAN B. RUBIN and
DONALD I. MARLIN,

Index No. 6771/85

Plaintiffs,

I.A.S. Part 28
(Judge Dontzin)

-against-

LEE S. KREINDLER, PAUL S. EDELMAN,
GERALD A. ROBBIE, MELVIN I. FRIEDMAN,
MARC S. MOLLER and FRANCIS G. FLEMING,
Individually and as Members of the Law
Firm of Kreindler & Kreindler, a
partnership, and MICHEL F. BAUMEISTER,
and MILTON G. SINCOFF,

Defendants.

---------------------------------------x

AFFIDAVIT OF JOSEPH KLEIMAN

State of New York)
)ss.:
County of New York)

Joseph Kleiman, being duly sworn, deposes and says:

I am presently the principal in Joseph Kleiman Designs, Ltd., 531 Main Street, Roosevelt Island, New York, New York.

Prior to January 24, 1985, I was a partner in Freidin & Kleiman Associates, Ltd. at 342 Madison Avenue, New York, New York, a firm engaged in architectural and offices design. On that date, Jack Freidin, a partner in the firm, resigned.

Between June and August of 1984, Alan Konigsberg requested me to do office layout work for his new law firm. I assigned Mr. Freidin and he then dealt directly with Mr. Konigsberg.

In October 1984, maybe earlier and maybe as late as November 1984, I saw Mr. Konigsberg, Mr. Phillips and Mr. Levy meeting with Mr. Freidin in our offices at 342 Madison Avenue.

In October or November 1984 or earlier, I saw two or three layout plans drawn by Mr. Freidin for the new Levy, Phillips & Konigsberg law firm. I do not presently recall the addresses of the offices and the dates of the layout plans.

As per previous conversation, in response to Milton Sincoff's inquiry, I checked the files existing in our office and could not find any material relating to these matters.

STATE & COUNTY OF N.Y.

DEC 31 1986

SWORN TO ON THIS DATE

Sworn to before me this
31 day of December, 1986

MILTON LEVINSON
Notary Public, State of New York
No. 31-7520050
Qualified in New York County
Commission Expires July 31, 1988

Joseph Kleiman

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK
--x
STANLEY J. LEVY, STEVEN J. PHILLIPS,
ALAN J. KONIGSBERG, IVAN B. RUBIN and
DONALD I. MARLIN,

Plaintiffs,

-against-

LEE S. KREINDLER, PAUL S. EDELMAN,
GERALD A. ROBBIE, MELVIN I. FRIEDMAN,
MARC S. MOLLER and FRANCIS G. FLEMING,
Individually and as Members of the Law
Firm of Kreindler & Kreindler, a
partnership, and MICHEL F. BAUMEISTER,
and MILTON G. SINCOFF,

Defendants.
--x

Index No. 6771/85

I.A.S. Part 28
(Judge Dontzin)

AFFIDAVIT OF
JACK FREID~~E~~IN

State of New York)
)ss.:
County of New York)

Jack Freid~~e~~in, being duly sworn, deposes and says:

I am presently a partner in Freiden & Wolc~~z~~ek, 62 West 45th Street, New York, New York. We are engaged in the architectural profession, including office design and layout.

Before and during 1984 and until January 24, 1985 when I resigned, I was a partner in Freid~~e~~in ~~&~~ Klei~~n~~man at 342 Madison Avenue, New York, New York, and was engaged in the same profession.

During the summer of 1984, my then partner, Joseph Klei~~n~~man, asked me to do office layout work for a new Konigsberg law firm.

As part of this work, I saw two or three offices in the area. Although I am not absolutely certain of their addresses, I believe they were at 1133 Avenue of the Americas, 530 Fifth Avenue and/or 757 Third Avenue.

I then drew the office plans.

In October 1984 at my offices at 342 Madison Avenue, I met Mr. Konigsberg and one or two of his new law firm partners. We discussed the plans.

I do not have any of the 1984 files, records or layouts relating to the above. I do have some records relating to the new law firm dated after my January 24, 1985 resignation from Freiden & Kleinman.

Jack Freiden

Sworn to before me this
12th day of December, 1986

Lisa C. Mzachem

LISA C. MZACHEM
Notary Public, State of New York
No. 41-4859081
Qualified in Queens County
Commission Expires May 12, 1988

THE COURT: Fair enough, but for reasons Mr. Morgan has chosen, he wants to separate them. Let's mark them.

(Whereupon Defendant's Exhibits A, B, C and D-Kreindler for identification were received and marked Defendant's Exhibits A, B, C and D-Kreindler in evidence respectively.)

THE COURT: Proceed, Mr. Morgan.

BY MR. MORGAN:

Q Looking at Exhibit A and Exhibit B are they identical documents with the exception of the name of a firm?

A Not exactly. There are other differences as well.

Q That is the difference, is it not?

A Yes.

Q On Exhibit B the name of the firm is Levy, Phillips, Moller and Konigsberg, and on Exhibit A it is Levy, Phillips & Konigsberg, right?

A Yes, that is correct.

Q It bears the date January 2, 1985, am I correct?

A Yes.

Q And both of them bear the same date?

A That's correct.

Q While we are on the identification of these documents, C and D are two sheets of paper that make up a split sheet of anticipated income and expenses for Levy, Phillips & Konigsberg; is that right?

A One is cash receipts and disbursements. The other is cash and loan balances. That is what they are.

Q They bear the date, at least A and B bear the date January 2, 1985; is that correct?

A Yes.

Q And it was Exhibit A that bears the firm name Levy, Phillips & Konigsberg that was submitted to the bank officer; is that correct?

A No, that is not correct.

Q It was the other one, correct?

A The initial submission was the Levy, Phillips, Moller & Konigsberg document.

Q When was that submission made?

A It was made in the very first days of 1985. I can't tell you whether it was the 2nd, 3rd, 4th but it was in the very first days of that year.

Q It was either on the date or near the date January 2, 1985?

A It was either on or immediately after. My impression is that it was the 3rd or the 4th of January.

Q When Mr. Marlin told you to take his name off it at some point?

A No, actually.

Q Was Mr. Marlin present when you were at the bank?

A Yes, he was.

Q And to whom did you speak with at the bank?

A We spoke with a number of loan officers at the bank.

Q Can you identify the one you spoke to first?

A We spoke to three of them at the same time.

Q Can you identify them?

A One whose name I recall was a woman whose name was Hope Tate. There were two gentlemen that we spoke to as well and I don't recall their names at the moment.

Q Do you have a document which would reveal the names of the two bank employees or officers you spoke to?

A I don't believe that I do, no.

Q You don't know them at all now?

A No. The people that we spoke to on that day I haven't had any dealings with since so I really don't recall the names of the other two, and I don't know of any document that identifies it.

Q Have you had any dealings with Hope Tate?

A No, I just happen to recall her name.

Q Is there any person at Citibank that you deal with

Q Mr. Phillips, in your January 2nd submission, whichever one it was, you did say that Levy, Phillips and Konigsberg is a new law firm of eight attorneys.

Is that correct?

Am I reading it correctly?

A Yes.

Q And you know the difference between present tense and future tense, being an author?

A I think I do, yes.

Q And this is in the present tense?

A Yes.

Q And you go on to say the firm will initially consist of five partners, two associates, and five paralegal assistants.

Do you not?

A Yes.

Q And under date January 2, 1985, who were the different partners?

A Stan Levy, myself, Alan Konigsberg, Don Marlin, and Ivan Rubin were the five people who were referred to in the document.

Q And the two associates?

A At that point, Diane Paolicelli and Robert Comitor was the other fellow.

Q Both of whom were, on January 2, 1985, employees of Kreindler & Kreindler.

Is that correct?

A Yes.

Q Now, you then have a section on either one of these documents that you call the history and nature of the firm's practice.

Right?

A Yes.

Q And you say, all of the members of Levy, Phillips and Konigsberg were partners at the firm of Kreindler & Kreindler.

Do you not?

A Yes.

Q And you do know the difference between present tense and past tense, right?

A Yes.

Q And that is past tense, right?

A Yes.

Q And you had not resigned from Kreindler & Kreindler when you made that statement, had you?

A No.

Q Nor had you told anybody at Kreindler & Kreindler, with the possible exception of Marc Moller, that there had been created a new law firm entitled Levy, Phillips and Konigsberg.

Am I correct?

A It hadn't been created.

Q Well, let's take it from the bank's point of view. It had been, right?

A No, from the bank's point of view it most certainly had not been.

If you read farther down, you will see that it is quite clear.

Q I will get through with the rest of it, all right?

A Okay.

Q This paper seams to say that it had been created. Do you concede that?

A No, I do not.

Q All right.

Going down, you say each of the five partners have contributed to the developing and enhancing of the well deserved reputation of Kreindler & Kreindler, they leave the Kreindler firm in order to control their own professional futures.

Is that your prose?

A I can't tell you whether it was mine or Moller's. It is either or both of our in collaboration.

Q That seems to be the present tense, does it not?

A Well, have contributed, my grammer is not so good, but I guess that is not present tense.

Q No, I am talking about they leave, present, past?

A Technically, neither, it is a different tense. Pluperfect, or something.

Q Something?

A It is beyond my grammatical skills.

Q Well, I guess you can't answer it, really, can you?

A Yes, that is correct.

Q It says, while the terms of the withdrawal from Kreindler & Kreindler are still to be negotiated, it is expected that the new firm will begin with a significant inventory of cases.

Now, was that significant inventory of cases that the new firm will begin with cases that were being prosecuted in the offices of Kreindler & Kreindler, under Kreindler & Kreindler's contingent fee contract?

A Yes.

Q They include medical malpractice, Kreindler & Kreindler's medical malpractice cases?

A Yes.

Q Product liability?

never heard of Levy, Phillips & Konigsberg, did they?

A As a new firm, not at that point.

Q But sometime if they were to become part of your inventory they would have, right?

A Yes, of course.

Q And you would have to persude them to take their cases out of Kreindler & Kreindler's office and move them to your office; is that right?

A No.

Q I use the word "persuasion." Would it simply be "Tell them"?

A Generally, yes.

Q Or would it be "If you want me, Steve Phillips, to represent you, I can only represent you in my new office;" did you ever say anything like that?

A Yes.

Q Now, those documents that you have in front of you, C and D, are those the spread sheets you gave to the bank?

A These are some but not all of the spread sheets.

Q When were they created?

A In the last week or ten days of 1984, the end of the summer.

Q Were created by whom?

A Excuse me.

Q By whom?

A They were produced by myself, Mr. Marlin, Mr. Levy, and we consulted with my brother who is an accountant.

Q Now, did you ever discuss the contents of this document dated January 2, 1985 with Mr. Lee Kreindler, the senior partner of the firm?

A I never discussed the contents of this document with Lee Kreindler.

Q Did you think you owed him a fiduciary duty to tell him that you and Mr. Levy, Mr. Koniqsberg and Mr. Moller were forming a new law firm?

A Once I had told them that I was thinking of leaving I had fulfilled --

Q You haven't answered my question.

A -- my responsibility.

MR. MORGAN: May I have the question read, your Honor?

THE COURT: Mr. Phillips, I'm going to have the court reporter read the question and I think it is a yes or no answer. Would you please answer that way.

(Whereupon the question was read by the reporter.)

THE ASSOCIATION OF THE BAR
OF THE CITY OF NEW YORK
42 WEST 44TH STREET
NEW YORK 10036-6690

ROBERT M. KAUFMAN
PRESIDENT

(212) 382-6700

United States Senate
Judiciary Committee
Room SD-224
Dirksen Senate Office Building
Washington, DC 20510

May 18, 1988

Attn: Steven J. Metalitz, Esq.
Chief Nomination Counsel

Gentlemen:

I am writing with respect to the nomination of Stuart A. Summit, Esq. to be a judge of the Second Circuit Court of Appeals. I noted with concern reports that questions had been raised regarding Mr. Summit's representation of partners in law firm dissolution actions.

I would like to call to the Committee's attention the fact that Mr. Summit's concern with the impact of such actions upon the profession led him, as a member of this Association's Committee on Arbitration and Alternative Dispute Resolution, to lead the development of a program for New York City of arbitration of disputes within law firms which the Association has adopted as a public service program available to the Bar. It was Mr. Summit's leadership in the Committee and in the presentation of the proposal to me, as President of the Association, that led to the adoption and implementation of this important program.

I did not think it appropriate to let these reported concerns pass by without calling this to the Committee's attention.

Sincerely yours,

Robert M. Kaufman

Robert M. Kaufman

RMK:db

cc: Stuart A. Summit, Esq.

FERN M. SMITH

Birth:	November 7, 1933	San Francisco, California
Legal Residence:	California	
Marital Status:	Married	F. Robert Burrows 2 children
Education:	1967 - 1970	Foothill Community College A.A. degree
	1970 - 1972	Stanford University B.A. degree
	1972 - 1975	Stanford Law School J.D. degree
Bar:	1975	California
Experience:	1975 - 1986	Bronson, Bronson and McKinnon Associate, 1975-1981 Partner, 1982-1986
	1986 - present	Supreior Court Judge State of California for the City and County of San Francisco
Office:	Superior Court, Department 25 Hall of Justice 850 Bryant Street San Francisco, Califorina 94103 415 553-1175	
Home:	3305 Washington Street San Francisco, California 94118	

To be United States District Judge for the Northern District of California

I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. Full name (include any former names used).

   Fern M. Smith, Fern Smith-Burrows, Fern E. Meyerson.

2. Address: List current place of residence and office address(es).

   Residence: 3305 Washington Street
   San Francisco, California 94118

   Office: Hall of Justice
   850 Bryant Street
   Department 25
   San Francisco, California 94103

3. Date and place of birth.

   November 7, 1933, San Francisco, California.

4. Marital Status (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).

   Married to F. Robert Burrows, industrial contractor, Williams & Burrows, 500 Harbor Boulevard, Belmont, California 94002.

5. Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.

   Foothill Community College 1967-1970,
   AA received June 1970

   Stanford University September 1970-June 1972,
   BA received June 1972

   Stanford Law School September 1972-June 1975,
   JD received June 1975

6. Employment Record: List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including firms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.

   September 1975 to September 1986 - Bronson, Bronson & McKinnon.

September 1986 to Present - State of California, Judge of the Superior Court, in and for the County of San Francisco.

7. Military Service: Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.

No.

8. Honors and Awards: List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.

Phi Beta Kappa, Stanford University, 1972. Graduated With Distinction Stanford University, graduated first out of 560 from Foothill College.

9. Bar Associations: List all bar associations, legal or judicial-related committees or conferences of which you are or have been a member and give the titles and dates of any offices which you have held in such groups.

California Judges Association; National Association of Women Judges; Queen's Bench; California Women Lawyers; American Bar Association.

10. Other Memberships: List all organizations to which you belong that are active in lobbying before public bodies. Please list all other organizations to which you belong.

None.

11. Court Admission: List all courts in which you have been admitted to practice, with dates of admission and lapses if any such memberships lapsed. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.

All courts of the State of California (12/75)
United States Court of Appeal, Ninth Circuit (12/75)
U.S. District Court, N.D. Cal. (1975)
U.S. District Court, C.D. Cal. (4/78)

My membership in the State Bar of California went on inactive status automatically upon my appointment to the San Francisco Superior Court.

12. Published Writings: List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues

involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.

Co-author, "The Selection and Use of Experts by Aviation Defense Attorneys" from The Forum, Section of Insurance, Negligence and Compensation Law, American Bar Association, Vol. XXI, No. 1, Fall 1976.

13. Health: What is the present state of your health? List the date of your last physical examination.

Excellent. Approximately June 1987.

14. Judicial Office: State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

September 1986 to Present - Judge of the Superior Court of California, in and for the County of San Francisco. Appointed by Governor George Deukmejian. The Superior Court is California's court of general jurisdiction.

15. Citations: If you are or have been a judge, provide: (1) citations for the ten most significant opinions you have written; (2) a short summary of and citations for all appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings; and (3) citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed where not officially reported, please provide copies of the opinions.

Since my appointment, I have been assigned to either the Juvenile Court or the Criminal Division of San Francisco Superior Court. Neither of those assignments generate written opinions; therefore, I have none to provide.

16. Public Office: State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.

Not applicable.

17. Legal Career:

a. Describe chronologically your law practice and experience after graduation from law school including:

1. whether you served as clerk to a judge, and if so, the name of the judge, the court, and the dates of the period you were a clerk;

2. whether you practiced alone, and if so, the addresses and dates;

3. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each.

From the time of my graduation from law school in 1975 until I was appointed to the Superior Court in August 1986, I was employed by Bronson, Bronson & McKinnon, 555 California Street, San Francisco, California 94104. I was an associate attorney with the firm from September 1975 until January 1981 and a member of the firm from that time until my appointment.

b. 1. What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?

The general nature of my practice was litigation with an emphasis on product liability defense. My clients were primarily large to medium-size corporations, although I have represented individual clients, especially in professional liability matters. From 1975 until approximately mid-1978, my work focused on aviation-related cases. From 1978 until 1986, I was involved primarily in mass tort litigation. My last year of practice also involved a variety of cases, including a will contest; professional liability matters involving dentists, architects, accountants, and lawyers; restraint of trades; real estate fraud; and commercial contract disputes. I also served as one of the managing partners of my firm and spent significant time on firm management during my last year of practice.

2. Describe your typical former clients, and mention the areas, if any, in which you have specialized.

Typical former clients included McDonnell Douglas Corporation, United Airlines, World Airways, Evergreen Helicopter Company, A.H. Robins Company, and Ortho Pharmaceutical Company. The greatest amount of my time was spent on either aviation or pharmaceutical cases.

c. 1. Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates.

I appeared in court frequently.

2. What percentage of these appearances was in:
    - (a) federal courts;
    - (b) state courts of record;
    - (c) other courts.

Federal courts - 40%
State courts of record - 60%
Other courts - Not applicable

3. What percentage of your litigation was:
    - (a) civil;
    - (b) criminal.

Civil - 100%

4. State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

Three sole counsel, eight chief counsel and one associate counsel.

5. What percentage of these trials was:
    - (a) jury;
    - (b) non-jury.

Jury - 25%
Non-jury - 75%

18. Litigation: Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

    - (a) the date of representation;
    - (b) the name of the court and the name of the judge or judges before whom the case was litigated; and
    - (c) the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

1) Evergreen Helicopter v. Bell Helicopter

Evergreen was operator of a Bell manufactured helicopter, which crashed in Umiat, Alaska. This was basically a subrogation case for the value of the hull. The unusual aspect was whether Lloyd's of London, Evergreen's insurer, could be brought in as the real party in interest. I prepared the pre-trial motions, took depositions, and handled pre-trial conferences.

Case was settled. Filed in U.S. Dist. Ct., N.D. Cal.; William W. Schwarzer, Judge.

I represented Evergreen helicopters. Counsel for Bell: Dov Grunschlag, Esq., Steinhart & Falconer, 333 Market Street, San Francisco, California 94105, (415) 777-3999.

2) Airlift v. McDonnell Douglas Corporation

Explosion of DC-8 aircraft during maintenance operations at Travis Air Force Base. One man was killed, two injured, and the aircraft, whose loss was valued at $22,000,000, was destroyed.

In the subrogation case for the hull, M.D.C. filed a motion for summary judgment based on an exculpatory clause in the purchase agreement. The motion was denied when initially filed.

On the first day of an estimated three-month jury trial, the court granted my motion to bifurcate the issue of whether or not an exculpatory clause in the contract of sale between Airlift and McDonnell Douglas waived and/or estopped any claim by Airlift against McDonnell Douglas for property loss.

After a two-week court trial on that issue, I resubmitted my motion for summary judgment on behalf of McDonnell Douglas Corporation, which was granted as to each cause of action. The ruling was affirmed by the Ninth Circuit 685 F.2d 267. I prepared the entire motion, took most of the depositions and prepared the case for trial. I was co-counsel for McDonnell Douglas Corporation along with my partner, Edwin W. Green.

3) From 1980 to 1985, I was primarily involved in mass tort litigation. Specifically, I represented A. H. Robins Company, Inc., in the defense of its Dalkon Shield litigation. At the peak of litigation, I supervised a caseload of over 500 cases and was actively involved in discovery, pre-trial, trial and settlement phases, as well as in the administration and management of numerous associates and staff personnel. This involvement included serving as one of the attorneys on behalf of Robins during

Judge Spencer Williams' sua sponte certification of a national class action to determine the amount of punitive damages, if any, for which Robins was liable. That action, captioned In re Dalkon Shield Litigation, was filed in the U.S. Dist. Ct., N.D. Cal. Numerous attorneys from various parts of the United States were involved. Although the class was ultimately decertified by the Ninth Circuit, the matter was a significant attempt by the District Court to find new procedural methods for dealing with mass tort litigation. In August of 1985, A. H. Robins Company filed for reorganization under the provisions of Chapter 11 of Bankruptcy Code.

Because of my involvement in the area of mass tort litigation, it is difficult to isolate specific cases from the Dalkon Shield litigation as a whole. I have, therefore, taken the liberty of listing the judges and opposing counsel with whom I have had the most contact since 1979. I will be happy to provide additional information as needed.

Judges: Spencer Williams, USDC, Northern District of California; Eugene F. Lynch, USDC, Northern District of California; Francis W. Mayer, San Francisco Superior Court (Retired); Daniel H. Weinstein, San Francisco Superior Court; Richard Figone, San Francisco Superior Court.

I also appeared before Roy L. Wonder and before Stuart R. Pollak, both of the San Francisco Superior Court.

Opposing Counsel: Anthony J. Klein, Klein, Wegis & Duggan, Bakersfield, California; Kent Russell, Law Offices of Kent Russell, San Francisco, California; David Sabih, Belli & Sabih, San Francisco, California; Paul Melodia, Walkup, Downing, Shelby, et al., San Francisco, California; and Michael Friedman, Conklin, Davids & Friedman, San Francisco, California.

4) From 1985 until going on the bench in 1986, I was involved in a variety of cases including a will contest; professional liability matters involving dentists, architects, accountants, and lawyers; restraint of trade; real estate fraud; and commercial contract disputes. I was also elected as one of the managing partners of my firm and spent significant time on managerial matters during my last year of practice.

Names and addresses of specific references are attached as an appendix. These are copies of lists prepared for the California and San Francisco Bar Judicial Evaluation Committees. I hope they will be of assistance and will satisfy your request.

19. Legal Activities: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived).

1) Increasing the number of women employed by my former law firm. At the end of my first year of practice, there were only 2 women associates in the firm and no women partners in a firm of approximately 70 lawyers. I became a member of the hiring committee at that time and remained on that committee until 1986. At the time I left the firm, there were approximately 30 women attorneys, including 7 women partners. I feel that my efforts on the hiring committee contributed to that increase and I am very proud of that contribution.

2) I was actively associated with the mass tort litigation involving the Dalkon Shield, manufactured by A. H. Robins Company. I felt that the most significant part of my participation was in my attempts to develop new methods and procedures which would limit the log jam on the courts and increase both the efficiency and fairness in resolution of these cases.

APPENDIX D

Significant Litigation
In Which I Have Been Involved

I. Dalkon Shield Litigation

   A. Judges

      1. Spencer Williams, United States District Court, Northern District of California
      2. Eugene F. Lynch, United States District Court, Northern District of California
      3. Francis W. Mayer, San Francisco Superior Court (Retired)
      4. Daniel H. Weinstein, San Francisco Superior Court

   B. Opposing Counsel

      1. Anthony J. Klein; Klein, Wegis & Duggan, Bakersfield, CA
      2. Kent Russell; Law Offices of Kent Russell, San Francisco, CA
      3. David Sabih; Belli & Sabih, Pacific Grove, CA
      4. Paul Melodia; Walkup, Downing, Shelby, Bastian, Melodia, Kelly & O'Reilly, San Francisco, CA
      5. Michael J. Friedman; Conklin, Davids & Friedman, San Francisco, CA

II. Leach v. Thompson

   A. Judges

      1. Stuart R. Pollack, San Francisco Superior Court
      2. Roy L. Wonder, San Francisco Superior Court

   B. Opposing Counsel

      1. James L. English; Leach, Biesty & McGreevy, San Francisco, CA
      2. L. Wallace Graham; Myers, Praetzel, Garety, Bjorklund & Graham, San Rafael, CA

C. Co-Defendants

1. Robert A. Helmenstine; Lynch, Loofbourrow, Helmenstine, Gilardi & Grummer, San Francisco, CA
2. Leonard W. Goldstein, Santa Rosa, CA
3. John G. Warner, Corte Madera, CA

III. Airlift v. McDonnell Douglas

A. Judge

1. The Honorable Francis C. Whelan, United States District Court, Central District of California

B. Opposing Counsel

1. Eugene Wooley; Kern & Wooley, Los Angeles, CA
2. J. Clinton Peterson; Kilpatrick & Peterson, Vallejo, CA

C. Adverse Co-Defendants

1. Paul Engstrom; Engstrom, Lipscomb & Lack, Los Angeles, CA
2. Wallace E. Maloney; Lord, Bissell & Brook, Chicago, Illinois

D. Co-Defendant

1. Henry J. Bogust; Chase, Rotchford, Drukker & Bogust, Los Angeles, CA

IV. Matthews v. Kern - No Judicial Intervention Necessary

A. Opposing Counsel

1. Joseph Ehrlich: Goldstein, Barceloux & Goldstein, San Francisco, CA

V. California Medical Review, Inc. v. Commonwealth Clinical Systems - No Judicial Intervention Necessary

A. Opposing Counsel

1. Ann G. Miller; Lillick, McHose & Charles, San Francisco, CA

REFERENCES FOR JUDICIAL EVALUATION

Judges

* Charles A. Legge	USDC, No. Dist.	556-6396
* Eugene F. Lynch	USDC, No. Dist.	556-0737
* Spencer Williams	USDC, No. Dist.	556-4971
Stanley A. Weigel	USDC, No. Dist.	556-1115
* Daniel H. Weinstein	S.F. Superior	731-5740
Stuart R. Pollak	S.F. Superior	558-4466
Maxine M. Chesney	S.F. Superior	558-3811
Roy L. Wonder	S.F. Superior	558-3984
* Francis W. Mayer	S.F. Sup. (Retired)	398-4977
Edward Stern	S.F. Superior	558-4571
Peter G. Stone	Santa Clara Superior	(408) 299-3408
Kenneth M. Eymann	Sonoma Superior	(Retired)
Raul A. Ramirez	USDC, Eastern Dist.	(916) 551-2856
Francis C. Whelan	USDC, Central Dist.	(213) 894-3632

Opposing Counsel

* J. Clinton Peterson	Kilpatrick & Peterson	(707) 553-8444
Ann G. Miller	Lillick, McHose & Charles	421-4600
Joseph Ehrlich	Goldstein, Barceloux & Goldstein	433-3000
Dov M. Greenschlag	Steinhardt & Falconer	777-3999
Morris M. Mawson	Mawson's Computers (formerly of Campbell & Anderson)	(707) 528-2840
Eugene Wooley	Kern & Wooley	(213) 391-7136
* Paul W. Engstrom	Engstrom, Lipscomb & Lack	(213) 487-2240
Wallace E. Maloney	Lord, Bissell & Brook	(312) 443-0700
* Anthony J. Klein	Klein, Wegis & Duggan	(800) 221-8536
* David Sabih	Belli & Sabih	(408) 649-1849
Nikolai Tehin	Bostwick & Tehin	421-5500

* Donald N. Hubbard	Belli & Sabih	(408) 649-1849
Dorsey Redland	Redland & Dupree	626-0355
Allen J. Ruby	Morgan, Ruby, Teter, Schofield, Franich & Fredkin	(408) 288-8288
Benjamin O. Andersen	Law Offices of Benjamin O. Andersen	465-1679
John A. Peak	" "	558-4922
* Kent Russell	Russell & Russell	929-8301

Co-Defendant/Co-Counsel

Alexis J. Perillat	Perillat & Perillat	986-0289
Martin J. Ruane, Jr.	Barfield, Barfield, Dryden & Ruane	362-6715
Philip R. McCowan	Popelka, Allard, McCowan & Jones	(408) 298-6610
* Peter E. Sibley	Washburn & Kemp	543-8131
* Sandi L. Nichols	Washburn & Kemp	543-8131
* John G. Warner	Law Offices of John G. Warner	924-2640
Robert A. Helmenstine	Lynch, Loofbourrow, Helmenstine, Gilardi & Grummer	441-0224
Kevin J. Dunne	Sedgwick, Detert, Moran & Arnold	982-0303
Harold Scott Conley	Sedgwick, Detert, Moran & Arnold	982-0303
Michael Healy	Sedgwick, Detert, Moran & Arnold	982-0303
Patrick T. Rankin	Rankin, Sproat & Blunden	465-3922
Clinton H. Coddington	Coddington & Winters	854-8600
Henry J. Bogust	Chase, Rotchford, Drukker & Bogust	(213) 626-8711
* Carol A. Hewitt	Lindsay, Hart, Neil & Weigler	(503) 226-1191
* Franklin M. Tatum	McGuire, Woods & Battle	(804) 644-4131

* Alexander Slaughter	McGuire, Woods & Battle	(804) 644-4131
* Clifford W. Perrin	Mays & Valentine	(804) 644-6011
* William Cogar	Mays & Valentine	(804) 644-6011
* Charles Socha	Tilly & Graves	(303) 321-8811
* Thomas A. McGuire, Jr.	O'Connor, Cavanaugh, Anderson, Westover, Killingsworth & Beshears	(602) 263-2738

Partners/Associates - Bronson, Bronson & McKinnon

* Edwin W. Green	Partner	986-4200
* Ignacio J. Ruvolo	Partner	"
* Edwin L. Currey	Partner	"
* Alexander L. Brainerd	Partner	"
* Michael H. Ahrens	Partner	"
Gary T. Walker	Partner	"
* Charles F. Preuss	Partner	"
* Kenneth E. Keller	Partner	"
* Janine S. Simerly	Associate	"
* Zela G. Claiborne	Associate	"
Peter J. Nova	Associate	"

Other Professional Contacts

* Ralph W. Bastian, Jr.	Walkup, Downing, Shelby, Bastian, Melodia, Kelly & O'Reilly	981-7210
John Daly Link	Walkup, Downing, Shelby, Bastian, Melodia, Kelly & O'Reilly	981-7210
* Deborah A. David	Lebovitz & David	(213) 277-0200
Kristen S. Hackler	Law Offices of Kristen S. Hackler	452-2823
Maja Kristin Hanks	Law Offices of Maja Kristen Hanks	864-4706
Gregory D. Hull	Needham & Hull	434-3133
Craig Needham	Needham & Hull	434-3133
Stephen Kaus	Kaus & Kerr	981-7780

* Gail Wallace	Schroeder & Davis	(408) 649-1122
* Stephen Stublarec	Pillsbury, Madison & Sutro	983-1000
Jack Friedenthal	Stanford Law School	497-4451
Bob Rabin	Stanford Law School	497-4451
Mike Wald	Stanford Law School	497-4451

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. List sources, amount and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients, or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.

   My former law firm still owes me approximately $15,000 in payment of my partnership interest. The firm presently plans to pay that debt in four annual installments. I have no other remaining financial ties with former business relationships.

2. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.

   As a lawyer, one of the first things I learned was to carefully examine a new file as soon as received in order to determine whether or not possible conflicts existed. I intend to continue that practice as a judge. The only areas of concern that I have would be litigation involving my former law firm, from which I would recuse myself and litigation involving vineyards and/or wineries, since I am the present owner of a vineyard which is managed by my husband. I would also recuse myself from any litigation involving my husband's business concerns directly or indirectly.

3. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

   No, other than as an interested owner of the vineyard operation.

4. List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding $500 or more (If you prefer to do so, copies of the financial disclosure reports, required by the Ethics in Government Act of 1978, may be substituted here.)

   See Financial Disclosure Report attached.

AO-10
Rev. 8/87

FINANCIAL DISCLOSURE REPORT

Annual Report Due by May 15 from Judicial Officers and certain Judicial Employees (28 USCA App. I, §§ 301-09)

Person Reporting (Last name, first, middle initial): Smith, Fern M.
Court or Organization: U.S. Dist. Ct. N.D. Cal.
Date of Report: 5/10/88
Title: Judge
Date of Entry/Nomination/Termination (only if initial or final report): May 9, 1988
Reporting Period (Calendar year, or inclusive dates): 1/1/87 to 4/30/88
Home or office address: Superior Court - Dept 25
Hall of Justice - 850 Bryant St.
San Francisco, Cal. 94103

IMPORTANT NOTES: *Please read the instructions accompanying this form. The report should include information pertaining to your spouse and dependent children, if any. Attach additional sheets if needed, identifying each attachment by showing your name, the date of the report, and the section(s) being completed.* **Complete all sections, checking the NONE box for each section where you have no reportable information.** *Compare and reconcile this report with last year's and list items in the same order as last year. Type or print clearly. Sign on last page.*

I. POSITIONS. *(Reporting individual only; see pp. 15-16 of Instructions.)*

☐ NONE (No reportable positions)

POSITION	NAME OF ORGANIZATION/ENTITY
Judge	Superior Court - San Francisco
Trustee	Fern M. Smith Trust

II. AGREEMENTS. *(Reporting individual only; see p. 17 of Instructions.)*

☐ NONE (No reportable agreements)

DATE	PARTIES AND TERMS
Sept. 1986	Fern M. Smith and Bronson Bronson & McKinnon. Pmt of Partnership Share as of Sept. 1986 to be made in annual installments over 5 year period.

III. NON-INVESTMENT INCOME. *(Partial disclosure for spouse; see pp. 18-20 of Instructions.)*

☐ NONE (No reportable non-investment income)

	DATE (Honoraria only)	SOURCE AND TYPE	GROSS INCOME (yours, not spouse's)
1		State of California - Wages	$ 89,500
2		City & County of San Francisco - Wages	$ 12,760
3		Williams & Burrows, Inc. (S)	$ -
4		Bronson, Bronson & McKinnon	$ 4,000
5		[redacted]	$

FINANCIAL DISCLOSURE REPORT (cont'd)

Name of Person Reporting: Smith, Fern M.

Date of Report: 5-10-88

IV. REIMBURSEMENTS and GIFTS--transportation, lodging, food, entertainment.

(Includes those to spouse and dependent children; see pp. 20-22 of Instructions.)

☑ NONE (No such reportable reimbursements or gifts)

	SOURCE	DESCRIPTION
1		
2		
3		
4		
5		
6		
7		
8		

V. OTHER GIFTS.

(Includes those to spouse and dependent children; see pp. 20-22 of Instructions.)

☑ NONE (No such reportable gifts)

	SOURCE	DESCRIPTION	VALUE
1			$
2			$
3			$
4			$

VI. LIABILITIES.

(Includes those of spouse and dependent children; see pp. 22-24 of Instructions.)

☐ NONE (No reportable liabilities)

	CREDITOR	DESCRIPTION	VALUE CODE*
1	Doris Hanley	Mtge - Liparita Vineyard -	P
2	[redacted]	(See Part VII)	
3	Sara Z. Burrows (S)	Note (unsecured)	N
4			
5			
6			
7			

* VALUE CODES:	J = $0 to $1,000 N = $50,001 to $100,000	K = $1,001 to $5,000 O = $100,001 to $250,000	L = $5,001 to $15,000 P = over $250,000	M = $15,001 to $50,000

FINANCIAL DISCLOSURE REPORT (cont'd)

Name of Person Reporting	Date of Report
Smith, Fern M.	5-10-88

I. INVESTMENTS and TRUSTS--income, value, transactions. *(Includes those of spouse; partial disclosure for dependent children; see pp. 24-35 of Instructions.)*

A. Description of Assets (including trust assets)	B. Income during period		C. Gross value at end of period		D. Transactions during period (Reporting individual and spouse)				
						If not exempt from disclosure			
Place "(X)" after each asset exempt from prior disclosure.	Amt. Code[1] (A-H)	Type (e.g., div.)	Value Code[2] (J-P)	Value Method Code[3] (Q-W)	Type (e.g., sold)	Date: Month-Day	Value Code[2] (J-P)	Gain Code[1] (A-H)	Identity of buyer/seller (if private transaction)
☐ NONE (No reportable income, assets, or transactions)					Not applicable per instructions				
1									
2 Vacaville Home Mtg. Bond	B	INT			Sold				
3 Amer. Cap. Cv. Sec Inv. (stk)	B	INT.			Sold				
4 Drexel Series Tr. Grp (mut. Fd)	D	Div.			Sold				
5 Amer. Cyanamid (Com. Stk)	C	Div.			Sold				
6 Chubb Corp (com. stk)	A	–			Sold				
Digital Equip. (com. stk)	A	–			Sold				
8 Gen Elec (com. stk)	C	DIV			Sold				
9 Gen Mills (com. stk)	C	DIV			Sold				
10 IBM (com. stk)	C	DIV			Sold				
11 Johnson & Johnson (com. stk)	C	DIV			Sold				
12 Merck (com. stk)	C	DIV			Sold				
13 J. P Morgan (com. stk)	C	DIV			Sold				
14 Nordstrom (com. stk)	B	DIV			Sold				
15 Proctor & Gamble (com. stk)	C	DIV			Sold				
16 Rite Aid (com. stk)	B	DIV			Sold				
17 Syntex (com. stk)	C	DIV			Sold				
18 Cal PCR Fin. Bonds	B.	INT			Sold				
19 Fidelity Overseas (Mut. Fd)	E	DIV & INT			Sold				
Mutual Shares (mut. Fd)	E	DIV & INT			Sold				

1 Income/Gain Codes: A = exempt ($0 to $100) B = $101 to $1,000 C = $1,001 to $2,500 D = $2,501 to $5,000 E = $5,001 to $15,000 F = $15,001 to $50,000 G = $50,001 to $100,000 H = over $100,000

2 Value Codes: J = exempt ($0 to $1,000) K = $1,001 to $5,000 L = $5,001 to $15,000 M = $15,001 to $50,000 N = $50,001 to $100,000 O = $100,001 to $250,000 P = over $250,000

3 Value Method Codes: Q = Appraisal R = Cost (real estate only) S = Assessed value T = Cash/market U = Book value V = Other W = Estimated

FINANCIAL DISCLOSURE REPORT (cont'd)

Name of Person Reporting: Smith, Fern M.

Date of Report: 5-10-88

/II. INVESTMENTS and TRUSTS--income, value, transactions. *(Includes those of spouse; partial disclosure for dependent children; see pp. 24-35 of Instructions.)*

A. Description of Assets (including trust assets) ace "(X)" after each asset exempt from prior disclosure.	B. Income during period: Amt. Code[1] (A-H)	B. Income during period: Type (e.g., div.)	C. Gross value at end of period: Value Code[2] (J-P)	C. Gross value at end of period: Value Method Code[3] (Q-W)	D. Transactions during period (Reporting individual and spouse): Type (e.g., sold)	D. If not exempt from disclosure: Date: Month-Day	D. If not exempt from disclosure: Value Code[2] (J-P)	D. If not exempt from disclosure: Gain Code[1] (A-H)	D. If not exempt from disclosure: Identity of buyer/seller (if private transaction)
☐ NONE (No reportable income, assets, or transactions)									
1 108 Monterey Dunes,					Not applicable per instructions				
2 Watsonville, Ca (Condo)	D	INT	—	—	Sold				
3 Fiserv (com. stk)	A	-	F	T					
4 T. Rowe PriceFund (Mut Fd)	C	DIV+ INT	E	T					
5 Amcap Fund (Mut. Fd)	D	DIV+ INT	F	T					
6 T. Rowe Price Int'l Fd (M.F.)	E	DIV+ INT	F	T					
7 Scudder Int'l Fd (Mut. Fd)	E	DIV+ Int	F	T					
8 Transatlantic Fd (Mut Fd)	E	DIV+ Int	F	T					
9 1982 - $27,750 Tice Oaks Assoc (Ltd Ptr)	B	Int	F	R					
10 West Park Ind Assoc (Ltd Ptr) 1984 - $104,000	B	INT	O	R					
11 McCowen Deleeuw (Ltd Ptr)	G	DIV+ CapGn	P	W					
12 1984-$25,000 Drexel Lambert Real Est Assoc (L.P.)	B	Int	F	R					
13 Liparita Vineyard 200 Las Posadas - Angwin, Ca	A	—	P	Q					
14 Security Pac Bank (Money Mkt Fund) New York (Fern M. Smith, Tr.)	F	Int	P	T					
15 Cal. St. 8.1% Bonds (2-1-92)	E	Int	N	T					
16 Cal. St. Gen. Ob. 8.75% Bds (4-1-97)	E	Int	N	T					
17 Sacto. Co. MFR 8.5% Bds (4-1-97)	E	Int	N	T					
18 Fed Nat'l Mtg. Assoc 7.55% (4-10-97)	E	INT	N	T					
19 Fed Home Ln Bks 8.15% (4-27-92)	E	Int	N	T					
20 Union Bank - San Francisco, Fern M. Smith, Tr. - (Checking & Money Mkt)	C	Int.	N	T					

1 Income/Gain Codes: A = exempt ($0 to $100) B = $101 to $1,000 C = $1,001 to $2,500 D = $2,501 to $5,000 E = $5,001 to $15,000 F = $15,001 to $50,000 G = $50,001 to $100,000 H = over $100,000

2 Value Codes: J = exempt ($0 to $1,000) K = $1,001 to $5,000 L = $5,001 to $15,000 M = $15,001 to $50,000 N = $50,001 to $100,000 O = $100,001 to $250,000 P = over $250,000

3 Value Method Codes: Q = Appraisal R = Cost (real estate only) S = Assessed value T = Cash/market U = Book value V = Other W = Estimated

FINANCIAL DISCLOSURE REPORT (cont'd)

Name of Person Reporting: Smith, Fern M

Date of Report: 5-10-88

II. INVESTMENTS and TRUSTS--income, value, transactions. *(Includes those of spouse; partial disclosure for dependent children; see pp. 24-35 of Instructions.)*

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure.	B. Income during period: Amt. Code[1] (A-H)	B. Income during period: Type (e.g., div.)	C. Gross value at end of period: Value Code[2] (J-P)	C. Gross value at end of period: Value Method Code[3] (Q-W)	D. Transactions during period (Reporting individual and spouse): Type (e.g., sold)	D. If not exempt from disclosure: Date: Month-Day	D. If not exempt from disclosure: Value Code[2] (J-P)	D. If not exempt from disclosure: Gain Code[1] (A-H)	D. If not exempt from disclosure: Identity of buyer/seller (if private transaction)
☐ NONE (No reportable income, assets, or transactions)									
1					Not applicable per instructions				
2 Acct of. Fern M. Smith - S.F. Drexel Burnham Money Mkt.	C	Int	F	T					
3 Com. Stk. Williams+Burrows, Inc (S)	A	-	A	W					
4 Burrows Grp-~~[illegible]~~ Partnership (S)	D	Int	F	W					
5 Com. Stk. Gateway Pac. Const. Co. (S)	E	Int	A	W					
6 Park Royal Assoc-LTd.Pt. (S)	A	-	E	W					
F. Robert Burrows (S) Wells Fargo Bank - Svings+Ckking	C	Int	-	-	closed				
8 Burrows Fam. Tr. (S)	E	Int	O	W					
9 Chalone Vineyards - Com. Stk (S)	A	-	D	T					
10 Silicon Valley Bank - Com. Stk (S)	A	-	E	T					
11 Ad. Micro. Dev. - Com. Stk (S)	A	-	D	T					
12 F. Robert Burrows (S) Franklin Fd - Money Mkt Acct	B	Int	D	T					
13 F. Robert Burrows (S) Bank of S.F. - Sving+Mkt Rate	B	Int	E	T					
14 Com. Stk Continental Pac. Minerals (S)	A	-	C	T					
15 San Antonio Plaza-LTd-Pt. (S)	B	Div.			Sold.				
16									
17									
18									
19									

1 Income/Gain Codes: A = exempt ($0 to $100) B = $101 to $1,000 C = $1,001 to $2,500 D = $2,501 to $5,000 E = $5,001 to $15,000 F = $15,001 to $50,000 G = $50,001 to $100,000 H = over $100,000

2 Value Codes: J = exempt ($0 to $1,000) K = $1,001 to $5,000 L = $5,001 to $15,000 M = $15,001 to $50,000 N = $50,001 to $100,000 O = $100,001 to $250,000 P = over $250,000

3 Value Method Codes: Q = Appraisal R = Cost (real estate only) S = Assessed value T = Cash/market U = Book value V = Other W = Estimated

FINANCIAL DISCLOSURE REPORT (cont'd)

Name of Person Reporting	Date of Report
Smith, Fern M.	5-10-88

II. ADDITIONAL INFORMATION or EXPLANATIONS. *(Indicate section of Report.)*

☑ **Check to affirm that differences in investments from those reported in prior year are exempt from disclosure.**

IX. CERTIFICATION.

In compliance with the provisions of 28 U.S.C. § 455 and of Advisory Opinion No. 57 of the Advisory Committee on Judicial Activities, and to the best of my knowledge at the time after reasonable inquiry, I did not perform any adjudicatory function in any litigation during the period covered by this report in which I, my spouse, or my children had a financial interest, as defined in Canon 3C(3)(c), in the outcome of such litigation.

I certify that all information given above (including information pertaining to my spouse and dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

Signature Fern M. Smith

Date May 11, 1988

NOTE: ANY INDIVIDUAL WHO KNOWINGLY AND WILFULLY FALSIFIES OR FAILS TO FILE THIS REPORT MAY BE SUBJECT TO CIVIL AND CRIMINAL SANCTIONS (28 U.S.C.A. APP. I, § 304, AND 18 U.S.C. § 1001.)

FILING INSTRUCTIONS:

1. *Mail signed original and 4 additional copies to:*

   Judicial Ethics Committee
   Administrative Office of the
   United States Courts
   Washington, DC 20544

2. *Deliver one copy to the Clerk of the Court on which you sit or serve. (Judicial employees not associated with a specific court, such as employees of the Administrative Office and the Federal Judicial Center, need not file a copy with any court.)*

5. Please complete the attached financial net worth statement in detail (Add schedules as called for).

   Financial statement and schedules attached.

6. Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

   No.

CONFIDENTIAL FINANCIAL STATEMENT (Fern M Smith)

3/31/88
Eff as of 4/30/88

NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS			
Cash on hand and in banks	500	000	
U.S. Government securities—add schedule	198	790	
Listed securities—add schedule	431	400	
Unlisted securities—add schedule	402	580	
Accounts and notes receivable:			
Due from relatives and friends	53	000	
Due from others	–	–	
Doubtful	–		
Real estate owned—add schedule	2,650	000	
Real estate mortgages receivable	–		
Autos and other personal property	50	000	
Cash value—life insurance	–		
Other assets—itemize:	–		
Total assets	4,285	690	

LIABILITIES			
Notes payable to banks—secured	–		
Notes payable to banks—unsecured	–		
Notes payable to relatives	–		
Notes payable to others	" –		
Accounts and bills due	80	000	
Unpaid income tax	–		
Other unpaid tax and interest	–		
Real estate mortgages payable—add schedule	865	000	
Chattel mortgages and other liens payable	–		
Other debts—itemize:	–		
Total liabilities	945	000	
Net worth	3,340	690	
Total liabilities and net worth	4,285	690	

CONTINGENT LIABILITIES			
As endorser, comaker or guarantor			
On leases or contracts	-		
Legal Claims			
Provision for Federal Income Tax	25	000	
Other special debt			

GENERAL INFORMATION		
Are any assets pledged? (Add schedule.)	-	
Are you defendant in any suits or legal actions?	–	–
Have you ever taken bankruptcy?	–	

1

3/31/88

Financial Statement Schedule - Fern M. Smith

Listed Securities	⊖
Fiserv	20,000
T. Rowe Price Fund (Def. Comp Plan)	9,000
Scudder Int'l Fund (IRA)	31,000
Amcap Fund "	29,000
T. Rowe Price Int'l Fund (Def. Ben. Pension Plan)	26,000
Scudder Int'l Fund " " "	24,000
Transatlantic Fund " " "	17,000
	156,000

Unlisted Securities	⊖
Live Oak Assoc (Gen. Ptn'r ships)	27,500
West Park Ind. Assoc. "	100,000
Mc Cowan De Leeuw "	250,000
Drexel Lambert Real Est Assoc. "	25,000
	402,500

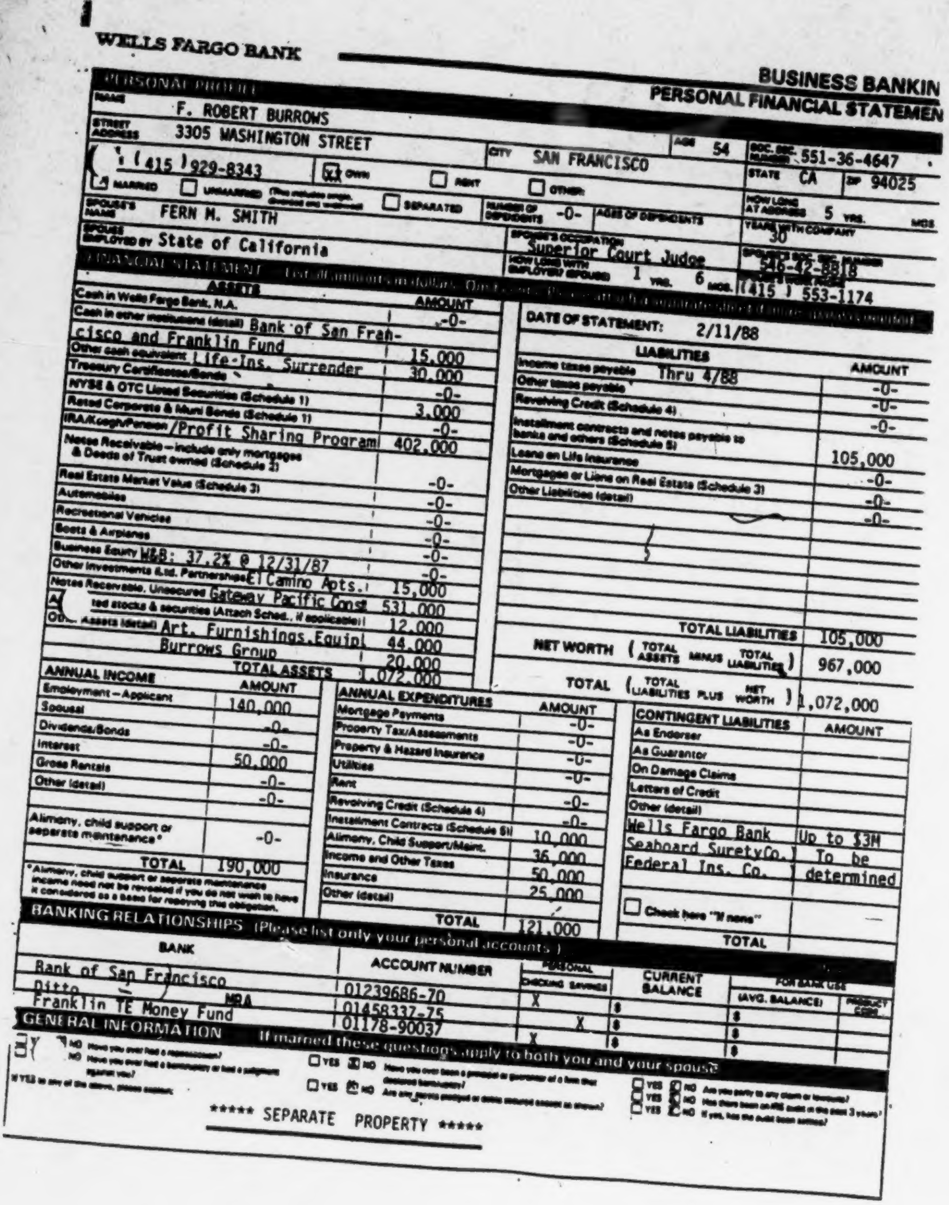
Real Estate Owned	⊖
3305 Washington	650,000
Lepanto Vineyards	2,000,000
	2,650,000

Real Estate Mtgs Payable	⊖
3305 Washington (Great Western Bank)	140,000
Lepanto Vineyards (Doris Hanley)	725,000
	865,000

Govt Securities on separate attached schedule (U.S. [illegible])

1-88 WORKING APPRAISAL FERN M. SMITH TRUST Y/E
CT NO. - P137 UTD 2/28/86 PORT MGR - BT
CT EXEC - 3305 WASHINGTON STREET

ANTITY	DESCRIPTION	% OF ASSETS	DATE	UNIT COST	COST	MARKET PRICE	MARKET VALUE	UNREALIZED GAIN(LOSS)	IND. DIV/INT RATE	EST. ANNUAL INCOME	DATE LONG TERM	REF NO.
CASH EQUIVALENTS												
	HORIZON PRIME TAX EXEMPT @ 6.55% 880229	46.0	022988		428593.95		428,593.95	0.00	6.55	28072		
FIXED INCOME SECURITIES												
MUNICIPAL BONDS												
100000	CALIFORNIA STATE 8.100% 02-01-1992 130618NC1	11.6	122484	100.00	100000.00	108.46835	108,468.35	8468.35	8.10	8100	6/25	ZAW2Y
75000	SACRAMENTO CA MFR 8.500% 04-01-1993 785881AA1	8.0	050984	100.00	75000.00	100.16310	75,122.33	122.33	8.50	6375	5/10	ZAW2F
100000	CALIFORNIA STATE GEN OBLIG 8.750% 04-01-1997 130620FV4	12.5	021385	100.40	100400.00	116.82431	116,824.31	16424.31	8.75	8750	8/14	ZAW2X
TOTAL MUNICIPAL BONDS		32.3			275,400.00		300,414.99	25014.99		23225		
GOVERNMENT BONDS												
100000	FEDERAL NATL MTG ASSN 7.550% 04-10-1989 313586UT4	10.8	080687	100.18	100176.25	100 19/32	100,593.75	417.50	7.55	7550	2/07	0073V
100000	FEDERAL HOME LOAN BANKS 8.150% 04-27-1992 313388RM4	10.8	080687	98.61	98613.75	100 27/32	100,843.75	2230.00	8.15	8150	2/07	0073X
TOTAL GOVERNMENT BONDS		21.7			198,790.00		201,437.50	2647.50		15700		
TOTAL FIXED INCOME SECURITIES		53.9			474,190.00		501,852.49	27662.49		38925		
TAL VALUE					902,783.95		930,446.44	27662.49		66997		



WELLS FARGO BANK

BUSINESS BANKIN
PERSONAL FINANCIAL STATEMEN

PERSONAL PROFILE

NAME	F. ROBERT BURROWS		
STREET ADDRESS	3305 WASHINGTON STREET	AGE 54	SOC. SEC. NUMBER 551-36-4647
(415) 929-8343	☒ OWN ☐ RENT ☐ OTHER	CITY SAN FRANCISCO	STATE CA · ZIP 94025
☑ MARRIED ☐ UNMARRIED (This includes single, divorced and widowed) ☐ SEPARATED	NUMBER OF DEPENDENTS -0-	AGES OF DEPENDENTS	HOW LONG AT ADDRESS 5 YRS. MOS.
SPOUSE'S NAME	FERN M. SMITH		YEARS WITH COMPANY 30
SPOUSE EMPLOYED BY	State of California	SPOUSE'S OCCUPATION Superior Court Judge	SPOUSE'S SOC. SEC. NUMBER 546-42-8818
		HOW LONG WITH EMPLOYER? (SPOUSE) 1 YRS. 6 MOS.	SPOUSE'S WORK PHONE (415) 553-1174

FINANCIAL STATEMENT — List all amounts in dollars. Omit cents. Please attach a separate sheet if more space is required.

DATE OF STATEMENT: 2/11/88

ASSETS	AMOUNT
Cash in Wells Fargo Bank, N.A.	
Cash in other institutions (detail) Bank of San Francisco and Franklin Fund	-0-
	15,000
Other cash equivalent Life-Ins. Surrender	30,000
Treasury Certificates/Bonds	
NYSE & OTC Listed Securities (Schedule 1)	-0-
Rated Corporate & Muni Bonds (Schedule 1)	3,000
IRA/Keogh/Pension /Profit Sharing Program	-0-
	402,000
Notes Receivable — include only mortgages & Deeds of Trust owned (Schedule 2)	
Real Estate Market Value (Schedule 3)	-0-
Automobiles	-0-
Recreational Vehicles	-0-
Boats & Airplanes	-0-
Business Equity W&B: 37.2% @ 12/31/87	-0-
Other Investments (Ltd. Partnerships) El Camino Apts.	-0-
Notes Receivable, Unsecured Gateway Pacific Const	15,000
Al[illegible]ted stocks & securities (Attach Sched., if applicable)	531,000
Other Assets (detail) Art. Furnishings.Equip	12,000
	44,000
Burrows Group	20,000
TOTAL ASSETS	1,072,000

LIABILITIES	AMOUNT
Income taxes payable Thru 4/88	
Other taxes payable	-0-
Revolving Credit (Schedule 4)	-0-
Installment contracts and notes payable to banks and others (Schedule 5)	-0-
Loans on Life Insurance	105,000
Mortgages or Liens on Real Estate (Schedule 3)	-0-
Other Liabilities (detail)	-0-
	-0-
TOTAL LIABILITIES	105,000
NET WORTH (TOTAL ASSETS MINUS TOTAL LIABILITIES)	967,000
TOTAL (TOTAL LIABILITIES PLUS NET WORTH)	1,072,000

ANNUAL INCOME	AMOUNT
Employment — Applicant	140,000
Spousal	
Dividends/Bonds	-0-
Interest	-0-
Gross Rentals	50,000
Other (detail)	-0-
	-0-
Alimony, child support or separate maintenance*	-0-
TOTAL	190,000

*Alimony, child support or separate maintenance income need not be revealed if you do not wish to have it considered as a basis for repaying this obligation.

ANNUAL EXPENDITURES	AMOUNT
Mortgage Payments	-0-
Property Tax/Assessments	-0-
Property & Hazard Insurance	-0-
Utilities	-0-
Rent	
Revolving Credit (Schedule 4)	-0-
Installment Contracts (Schedule 5)	-0-
Alimony, Child Support/Maint.	10,000
Income and Other Taxes	36,000
Insurance	50,000
Other (detail)	25,000
TOTAL	121,000

CONTINGENT LIABILITIES	AMOUNT
As Endorser	
As Guarantor	
On Damage Claims	
Letters of Credit	
Other (detail)	
Wells Fargo Bank	Up to $3M
Seaboard SuretyCo.]	To be
Federal Ins. Co.]	determined
☐ Check here "if none"	—
TOTAL	

BANKING RELATIONSHIPS (Please list only your personal accounts.)

BANK	ACCOUNT NUMBER	PERSONAL CHECKING	PERSONAL SAVINGS	CURRENT BALANCE	FOR BANK USE (AVG. BALANCE)	PRODUCT CODE
Bank of San Francisco						
Ditto	01239686-70	X		$	$	
Franklin TE Money Fund MRA	01458337-75		X	$	$	
	01178-90037	X		$	$	

GENERAL INFORMATION If married these questions apply to both you and your spouse.

☐ YES ☐ NO Have you ever had a repossession?
☐ YES ☐ NO Have you ever had a bankruptcy or had a judgment against you?
☐ YES ☒ NO Have you ever been a principal or guarantor of a firm that declared bankruptcy?
☐ YES ☒ NO Are any assets pledged or debts secured except as shown?
☐ YES ☒ NO Are you party to any claim or lawsuit?
☐ YES ☒ NO Has there been an IRS audit in the past 3 years?
☐ YES ☒ NO If yes, has the audit been settled?

If YES to any of the above, please explain:

***** SEPARATE PROPERTY *****

HOW HELD CODE — In space provided, please indicate applicable abbreviation: A = Applicant; S = Spouse; J = Jointly with spouse; O = Jointly with other than spouse; ASP = Applicant's separate property; SSP = Spouse's separate property.

SCHEDULE 1 Securities Owned

HOW HELD	[illegible]	DESCRIPTION	TITLE IN NAME OF	PLEDGED YES or NO	WHERE QUOTED	PRESENT MKT. VALUE
		MISCELLANEOUS: SEE BELOW				
					TOTAL	$

SCHEDULE 2 Notes Receivable Mortgage & Deed of Trust Owned

HOW HELD	NAME OF DEBTOR	COLLATERAL/TYPE OF PROPERTY	DATE OF NOTE	ANNUAL P&I PAYMENT	DUE DATE	1st OR 2nd LIEN	UNPAID BALANCE
	NONE						
						TOTAL	$

SCHEDULE 3 Real Estate Holdings Mortgages or Liens

PROPERTY TYPE: SD = Single Dwelling; MD = Multiple Dwelling; C = Com/Ind. *(Attach separate schedule for additional properties.)*

	FIRST PROPERTY			SECOND PROPERTY			THIRD PROPERTY		
PROPERTY TYPE	☒ SD	☐ MD	☐ C	☐ SD	☐ MD	☐ C	☐ SD	☐ MD	☐ C
ADDRESS	None								
DATE PURCHASED									
COST	$			$			$		
ESTIMATED MARKET VALUE (A)	$			$			$		
1ST MORTGAGE BALANCE (B)	($)			($)			($)		
ALL OTHER MORTGAGES/LIENS (C)	($)			($)			($)		
(A − B − C)	$			$			$		

SCHEDULE 4 Revolving Credit

A	CREDITOR'S NAME	ACCOUNT NO.	MONTHLY PAYMENT	PRESENT BALANCE
	AMEX	3728-426410- 72009	Current	-0-
		TOTALS	$ -0-	$ -0-

SCHEDULE 5 Installment Contracts & Notes Payable

CREDITOR'S NAME	ACCOUNT NO.	MONTHLY PAYMENT	PRESENT BALANCE
Sara Z. Burrows	1/80 Note	$500	$52,000
E. M. Smith	5/87: 10% Note	-0-	53,000
	TOTALS	$ 500	$ 105,0

ADDITIONAL COMMENTS:

UNLISTED STOCKS		
	Silicon Valley Bank	$12,000
	Gateway Pacific Construction. Inc.	-0-
		$12,000

SIGNATURES

the purpose of obtaining or establishing credit from time to time, the undersigned certify that the above (attached) statement and supporting schedules, ared by or for the undersigned, are a complete and true statement of the financial condition of the undersigned on the date indicated. You are authorized o make whatever inquiries about the undersigned deemed necessary and appropriate for the purpose of evaluating the credit application provided. You are also authorized to provide credit information about your credit experience with the undersigned to other creditors and credit reporting agencies.

2/11/88

APPLICANT'S SIGNATURE DATE

X N/A (SEPARATE PROPERTY)

SPOUSE'S SIGNATURE DATE

NOTE: Spouse's signature required only if spouse is co-applicant.

III. GENERAL (PUBLIC)

1. **An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.**

   I recognize and fully support Canon 2 of the ABA. As our society and our legal system becomes more complex, all members of the legal system must strive to keep the legal and judicial processes available to all persons, including those disadvantaged educationally, emotionally, and economically. My personal involvement in this regard has always been "behind the scenes," both in a teaching capacity and as a member of my former firm's hiring committee for 8 years, during which period I spent significant time attempting to recruit women and other minorities at law schools around the country. In June, 1987, the Chief Justice of the California Supreme Court appointed me to the Advisory Committee to the Judicial Council on Gender Bias in the Courts. The charge of that committee is to enquire into equal treatment for women and men in the courts. The initial task is to determine whether bias exists (towards litigants as well as lawyers and court personnel), to document if it does, and to make suggestions for change to the Judicial Council.

2. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion. Do you currently belong, or have you belonged, to any organization which discriminates -- through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership, what you have done to try to change these policies?

   No.

3. Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts?

   Yes.

   If so, did it recommend your nomination?

   I believe so.

Please describe your experience to the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and interviews in which you participated).

I was initially contacted by two judges who are on the board of directors of the National Association of Women Judges. They informed me that Senator Wilson's office had contacted the association in order to encourage qualified women to apply for the Federal bench. I was encouraged by that organization to request an application. This was done through John Davies, Esq., a San Diego attorney. Several weeks after my completed application was returned to Mr. Davies, I had a personal interview with him in San Diego sometime during January. Toward the end of February. Senator Wilson contacted me by telephone to state that he was going to recommend my name to the President. This was followed by an interview with various members of the Justice Department. Subsequent to that, I was interviewed by the FBI.

4. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as seeking any express or implied assurances concerning your position on such case, issue, or question? If so, please explain fully.

No.

5. Please discuss your views on the following criticism involving "judicial activism."

The role of the Federal judiciary within the Federal government, and within society generally, has become the subject of increasing controversy in recent years. It has become the target of both popular and academic criticism that alleges that the judicial branch has usurped many of the prerogatives of other branches and levels of government.

Some of the characteristics of this "judicial activism" have been said to include:

a. A tendency by the judiciary toward problem-solution rather than grievance-resolution;

b. A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;

c. A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and

d. A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.

Never having been an academic and only having been a judge for a short time, I cannot pretend that I have a well-defined or articulate explanation of my judicial philosophy. In fact, this is the first time that I have ever been asked to specifically address that issue. I can state, however, that I firmly believe in the separation of powers among the three branches of government. It is that system which keeps government from becoming too heavily weighted in any direction and maintains a healthy and necessary diversity. I also believe that, in order to function properly, the judiciary must maintain its independence. It will not be allowed to do so, unless it keeps the respect of the people and the other branches of government. To do that, the judiciary must concede and accept the fact that its role, while crucial, is extremely limited in scope. Basically, it will only be by accepting the limits of its authority, that it will be allowed to freely exercise the authority it rightfully has.

JAN E. DuBOIS

Birth:	January 17, 1931	Philadelphia, Pennsylvania
Legal Residence:	Pennsylvania	
Marital Status:	Married	Ruth Harberg 4 children
Education:	1948 - 1952	University of Pennsylvania B.S. degree
	1954 - 1957	Yale University Law School LL.B. degree
Bar:	1958	Pennsylvania
Military Service:	1952 - 1954	United States Army Captain
Experience:	1957 - 1958	Law Clerk to Hon. Harry E. Kalodner, U.S. Court of Appeals, Third Circuit
	1958 - present	White and Williams Associate, 1958-1964 Partner, 1964-present
Office:	1234 Market Street 17th Floor Philadelphia, Pennsylvania 19107 215 854-7108	
Home:	643 Washington Lane Rydal, Pennsylvania 19046	

To be U. S. District Judge for the Eastern District of Pennsylvania

RESPONSE

JAN E. DUBOIS

UNITED STATES SENATE

QUESTIONNAIRE FOR JUDICIAL NOMINEES

1. **Full name (include any former names used.)**

   Jan Ely DuBois

2. **Address: List current place of residence and office address(es).**

   643 Washington Lane
   Rydal, PA 19046

   White And Williams
   1234 Market Street, 17th Floor
   Philadelphia, PA 19107

3. **Date and place of birth.**

   January 17, 1931 Philadelphia, Pennsylvania

4. **Marital Status (include maiden name of wife, or husband's name). List spouse's occupartion, employer's name and business address(es).**

   Married; Ruth Thekla Harberg; my wife is self-employed as a consultant in prevention of drug and alcohol abuse. She is currently working in that capacity for the Corporate Alliance for Drug Education, WCAU Building, 393 City Avenue, Philadelphia, PA 19131.

5. **Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.**

   University of Pennsylvania, 1948 to 1952, Bachelor of Science, 1952;

   Yale University Law School, 1954 to 1957, LL.B., 1957

6. **Employment Record: List (by year) all business or professional corporations companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including firms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.**

   U.S. Army - July, 1952 to March, 1954;
   Martinique Hotel - Pool & Cabana Manager - 63rd St., & Collins Avenue, Miami Beach, FLA - April, 1954 to September, 1954;
   I. Jerome Stern, Esquire - Law Clerk - 700 IVB Building, Philadelphia, PA -June, 1955 to September, 1955;
   U.S. Government - Department of Justice - Law Clerk - Washington, D.C - June, 1956 to August, 1956;
   U.S. Goverment - Hon. Harry E. Kalodner Judge - Law Clerk - U.S. Court of Appeals Third Circuit - U.S. Courthouse, Philadelphia, PA - September, 1957 to September, 1958;
   White And Williams - Attorney-Partner - 1234 Market Street, 17th Fl., Philadelphia, PA - 1958 to Present.

7. **Military Service: Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.**

   Yes. 1952-1954; Army; First Lieutenant; 018923[illegible]; honorably discharged; USAR, retired as Captain;

8. **Honors and Awards: List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.**

   Beta Gamma Sigma, National Accounting Honor Society, University Of Pennsylvania (1951);
   John Currier Gallagher Prize for Trial Advocacy, Yale University Law School (1957).

9. **Bar Associations: List all bar associations, legal or judicial-related committees or conferences of which you are or have been a member and give the titles and dates of any offices which you have held in such groups.**

   Philadelphia Bar Foundation, 1982 to present; President-Elect, 1986; President, 1987;
   American Bar Association and Pennylvania Bar Association;
   Philadelphia Bar Association; Chairman, Medico-Legal Committee, 1981; Member of various Committees;
   Faculty, National Institute for Trial Advocacy, Philadelphia, 1981;
   Association of Defense Counsel of Philadelphia;
   Lawyers' Club of Philadelphia;
   Pennsylvania Defense Institute; Member - Speaker, 1986;
   Planner and Moderator, Panel, Jury Psychology, Judicial Conference for the Third Circuit, Williamsburg, Virginia, 1983;
   Speaker, Continuing Legal Education Committee, U.S. Court for the Eastern District of Pennsylvania, 1987.

10. **Other Memberships: List all organization to which you belong that are active in lobbying before public bodies. Please list all other organizations to which you belong.**

    I belong to no organizations that are active in lobbying before public bodies other than the Bar Associations and other law related groups to which reference is made in paragraph 9 hereof.

    Yale Law School Association of Philadelphia - Former President and Vice-President;
    Yale Law School Association - Member of Executive Committee, Former Treasurer;
    Philadelphia Junior Chambers of Commerce - Former Director;
    Yale Club of Philadelphia;
    Pennsylvania Society;
    E. Coppee Mitchell Masonic Lodge (Inactive);
    Zeta Beta Tau Fraternity (College Fraternity);
    Friars Senior Honorary Society (College Society);

Reform Congregation Keneseth Israel - President 1985 to 1987, Honorary President, 1987 to Present.

11. **Court Admission:** List all courts in which you have been admitted to practice, with dates of admission and lapses if any such memberships lapsed. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.

U.S. Supreme Court - 1982;
U.S. Court of Appeal for the Third Circuit - 1958;
U.S. District Court for the Eastern District of Pennsylvania - 1958;
Pennsylvania Supreme and Superior Courts - 1958;
Common Pleas Court of Philadelphia County - 1958
Common Pleas Court of Bucks, Delaware, Montgomery and Chester Counties.

No time lapse in membership.

12. **Published Writings:** List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they were readily available to you, please supply them.

None.

13. **Health:** What is the present state of your health? List the date of your last physical examination.

Good. My last physical examination was on April 5, 1988.

14. **Judicial Office:** State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

None.

15. **Citations:** If you are or have been a judge, provide: (1) citations for the ten most significant opinions you have written; (2) a short summary of and citations for all appellate opinions where your judgment was affirmed with significant criticism of your substantive or procedural rulings; and (3) citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were officially reported, please provide copies of the opinion.

None

16. **Public Office:** State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State

(chronologically) any unsuccessful candidacies for elective public office.

None.

17. **Legal Career:**

a. **Describe chronologically your law practive and experience after graduation from law school including:**

1. **whether you served as clerk to a judge, and if so, the name of the judge, the court, and the dates of the period you were a clerk;**

Law Clerk, Honorable Harry E. Kalodner, U.S. Court of Appeals for the Third Circuit, 1957 - 1958.

2. **whether you practiced alone, and if so, the addresses and dates;**

None.

3. **the dates, names and addresses of law firms or offices or governmental agencies with which you have been connected, and the nature of your connection with each.**

White And Williams, 1234 Market Street, 17th Floor, Philadelphia, PA, 1958, partner since 1964.

b. 1. **What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?**

General litigation with emphasis on insurance defense work. In recent years the majority of my practice has been devoted to the defense of doctors and hospitals in medical malpractice cases. Prior thereto, in addition to medical malpractice work I handled the defense of product liability cases, various railroad cases, and general litigation matters including securities and anti-trust cases.

2. **Describe your typical former clients, and metion the areas, if any, in which you have specialized.**

Insurance carriers, doctors, hospitals, manufacturers. My areas of specialization are set forth in sub-paragraph b(1).

c. 1. **Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearance in Court varied, describe each such variance, giving dates.**

Regularly.

2. What percentage of these appearances was in:
   (a) federal court;

   15%

   (b) state court of record;

   85%

   (c) other courts.

3. What percentage of your litigation was:
   (a) civil;

   100 %

   (b) criminal.

   0%

4. State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

   Approximately 12 to 15 as sole counsel for client during last five years. Before then I tried approximately 2 to 3 cases to verdict each year.

5. What percentage of these trials was:
   (a) jury;

   85%

   (b) non-jury;

   15%

18. Litigation: Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final deposition of the case. Also state as to each case:

    (a) the date of representation;
    (b) the name of the court and the name of the judge or judges before whom the case was litigated; and

    (c) The individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

1. Schneider v. Seitchik, et al, Court of Common Pleas of Philadelphia County

This medical malpractice case was tried by another law firm and resulted in a jury verdict in the amount of $1,500,000.00 against four of the five defendants including Dr. Murray Seitchik. I was asked to handle the appeal on behalf of Dr. Seitchik and, although the jury verdict was affirmed, the Opinion was significant because it defined the role of an operating surgeon as "Captain of the Ship" during a surgical procedure. The Decision of the Superior Court is reported at 257 Pa. Superior Ct. 348, 390 A.2d 1271 (1978). In addition, the case was important because, in connection with the Appeal, an Application was made to decrease the amount of the supersedeas bond pursuant to Rules of Appellate Procedure 1733 (a) and 1737. That Application presented the novel question whether each defendant was required to post a supersedeas bond in the amount of 120 percent of the verdict, which sum would exceed the insurance coverage available to each defendant, in order to prevent execution on the judgment pending a decision on the Appeal. The Superior Court entered an Order permitting the joint posting of a bond in the total amount of 120 percent of the total verdict. Plaintiffs were represented by James Beasley (215-665-1000). Other counsel in the case were James Lewis Griffith (Albert Einstein Medical Center, Northern Division) (215-893-1234), and Edward L. Edelstein (Dr. Bernard Goldstein) (215-875-1803). Three other attorneys participated in the trial, but not the Appeal.

2. Mustang Transportation Co., et al v. Ryder Truck Lines, Inc., and Liberty Mutual Insurance Company, United States District Court for the Eastern District of Pennsylvania, CA-77-1620

This case was tried on stipulated facts before Honorable Clifford Scott Green in 1981. It involved provisions of the Interstate Commerce Act and common law principles insofar as they applied to an interstate trucking accident, and established that a lessor of an interstate tractor/trailer was not insulated from liability under the provisions of the Interstate Commerce Act. The District Court Opinion was reported at 523 F. Supp. 1097 (1981). On July 29, 1982, the Third Circuit entered an Order affirming, without Opinion, the District Court's Judgment, 688 F.2d 823 (1982). Certiorari was denied on January 10, 1983, 51 U.S.L.W. 3510. I represented the lessee of the tractor/trailer, Ryder Truck Lines, Inc., and its insurer, Liberty Mutual Insurance Company. Counsel for plaintiff was Thomas Finarelli (215-627-0303).

3. Brooks v. The Trustees of the University of Pennsylvania, et al, Court of Common Pleas, Philadelphia County, 8102-3573

This was a medical malpractice action against the Trustees of the University of Pennsylvania and two doctors arising out of the birth of a child at the Hospital of the University of Pennsylvania. I represented The Trustees and the Chief of Pediatrics at the Hospital. Plaintiffs sought damages for brain injury to the baby resulting from alleged negligence in the use of internal electronic fetal monitors, a relatively new device at the time, and failure to diagnose and treat meningitis. The case was tried in late November and early December, 1982 before Honorable Charles Wright; the jury returned a verdict for the defendants in forty minutes. Post-trial Motions were filed by plaintiffs, but were dismissed because of counsel's failure to comply with the Rules of Civil Procedure. Although no Opinion was written, the case was significant because, after concluding there was no negligence, the jury was able to overcome its sympathy for the brain damaged child and return a verdict for the defendants. Counsel for plaintiffs was Stephen Bruccoleri (215-563-6821); counsel for co-defendant, Dr. Cheryl Kerr (who was dismissed from the case before it was submitted to the jury), was Daniel McWilliams (215-985-1060).

4. Techalloy Company v. Reliance Insurance Company, Court of Common Pleas, Montgomery County.

This case presented for the first time in Pennsylvania significant questions of insurance coverage in the context of a class action for damages allegedly resulting from the dumping or storage of a dangerous chemical. I represented Reliance Insurance Company, the insurer of Techalloy Company, the defendant in the class action. Reliance denied coverage, and the underlying class action was thereafter terminated by the granting of a Motion for Judgment on the Pleadings handled by private counsel for Techalloy. Techalloy then brought an action against Reliance, claiming that there was coverage for the underlying class action and seeking recovery of counsel fees and other expenses incurred in its defense. Preliminary Objections in the nature of a demurrer were sustained by Honorable Richard Lowe and, on Appeal, the Superior Court affirmed, holding: a) a Complaint alleging exposure to, and ingestion and use of, water contaminated with a highly dangerous chemical released by a steel company contained sufficient allegations of personal injury to render the Complaint at least potentially within the policy's coverage notwithstanding the absence of any allegations of present personal injury; and, b) nevertheless, because the Class Action Complaint alleged that the pollution occurred over a period of 25 years, Reliance had no duty to defend or indemnify Techalloy in view of the Pollution Exclusion which provided coverage for such claims only where the discharge of toxic chemicals was sudden and accidential. The Opinion of the Superior Court is reported at 338 Pa. Super. 1, 487 A.2d 820 (1985).

This is a case of first impression in Pennsylvania and establishes Pennsylvania as one of the few States which will literally interpret the Pollution Exclusion. Plaintiff's counsel was Willian J. Lehane (215-988-2938).

5. Hunsicker v. North Penn Hospital, et al, Court of Common Pleas, Montgomery County.

Motions for Summary Judgment filed by the defendants based on the Statute of Limitations defense were granted by Honorable

William Vogel. The Judgment was affirmed by the Superior Court, 465 A.2d 24 (1983). I represented one of the defendants, North Penn Hospital. The case is significant because: a) it more clearly explained when a plaintiff is deemed to have discovered the cause of his harm or injury for purposes of the Statute of Limitations; and, b) it established that non-negligent failure of counsel for a plaintiff, or inability of counsel for a plaintiff, to pursue a plaintiff's cause of action was insufficient to toll the running of the Statute of Limitations. Plaintiffs' counsel was Michael J. Clement (215-272-8400). The co-defendant was represented by George H. Knoell (215-275-2000).

6. Posternack v. American Casualty Company of Reading, Court Common Pleas, Philadelphia County.

This case involved an Appeal from an Order denying the Petition of my client, American Casualty Company of Reading, for Leave to File an Amended Answer and New Matter alleging that plaintiffs' claim against the American Casualty Company was barred under principles of res judicata and collateral estoppel by a final judgment against plaintiff in a similar case against another insurance company in the United States District Court for the Eastern District of Pennsylvania. The lower court refused to permit the amendment on the ground that there was no mutuality of estoppel in the two cases - the defendant in the District Court action was a different insurer - although all other facts were substantially identical. On Appeal, the Superior Court reversed the lower court and permitted the amendment. The case is significant because it established the proposition that mutuality of estoppel is not a requirement of res judicata and/or collateral estoppel in all cases. The Opinion of the Superior Court is reported at 421 Pa. 21, 281 A.2d 350 (1966). Counsel for plaintiff was Gary Leedes, Esquire (Telephone number unavailable).

7. Level vs. The Trustees of the University of Pennsylvania, Court of Common Pleas, Philadelphia County, 8101-1383

This was a medical malpractice case arising out of abdominal surgery performed at Hospital of the University of Pennsylvania. I represented The Trustees of the University of Pennsylvania. The case was tried in May of 1985 before Honorable Richard Klein and, on behalf of The Trustees, we obtained a Compulsory Non-Suit. The case is significant because the Court sustained the position of The Trustees that a resident who is charged with the responsibility for obtaining an informed consent for surgery from a patient cannot be found liable to a patient for lack of informed consent if he did not participate in the surgery. Counsel for plaintiffs was Benjamin Kuby (215-592-0300); counsel for co-defendant, Dr. John Thomas, was Barton L. Post (215-587-1000).

8. Corbett vs. DeMoura, M.D., et al, Court of Common Pleas, Philadelphia County, 8101-1329

This was a medical malpractice case arising out of the alleged failure to treat an infection which resulted in amputation of a lower limb of a patient. I represented one of the defendant/physicians, Dr. Jamilio DeMoura. The case was tried in November and December, 1985, before Honorable Charles Wright and resulted in the entry of a Compulsory Non-Suit as to Dr. DeMoura. The case was significant in that the Trial Judge applied the discovery rules literally and refused to permit plaintiff's attorney to call as witnesses two experts whose names and reports were not submitted until the eve of trial. The case was tried to verdict against a co-defendant and the jury returned a verdict in favor of the plaintiff. It is presently on Appeal. Counsel for plaintiff was Lawrence Finney (215-735-1616); counsel for the co-defendant, Dr. I. David Weisband, was Albert J. Schell (215-587-1000).

9. Kocubinski vs. The Trustees of the University of Pennsylvania, Court of Common Pleas, Philadephia County, 6902-4630

This medical malpractice case was tried for two weeks in April and May, 1981 before Honorable Francis Biunno, and resulted in a jury verdict for my client, the defendant, The Trustees of the University of Pennsylvania. The verdict was affirmed on Appeal. The case arose out of the death of plaintiff's decedent who jumped from a window of the Graduate Hospital where he had been admitted for treatment of an upper respiratory infection. Plaintiff's claim was based on the alleged failure of Hospital physicians and nurses to properly monitor and restrain the patient when his condition worsened. It is significant because the Superior Court held plaintiff was prevented from raising on Appeal the claimed error of the Lower Court in refusing to charge the jury on a particular standard of causation because plaintiff failed to submit a specific point for charge on that issue. A secondary issue of importance related to the admission into evidence of an excited utterance of a deceased nurse through testimony of a physician, based on his entries in the hospital chart, which was affirmed on Appeal. Plaintiff was represented by Joseph F. Roda (717-397-3791) and David H. Marion (215-563-0650).

10. Westinghouse Corporation v. Kelsey-Hayes Company, et al, United States District Court for the Eastern District of Pennsylvania, CA-84-2036

This case involved a multi-million dollar claim for damages for alleged breach of contract in the forging of blades for large land based turbines installed in the United States and abroad. It was assigned to Honorable Louis Bechtle. The case was settled in late 1985 after extensive discovery proceedings and numerous arguments on discovery motions. The case was significant in that it involved in excess of 35,000 pages of documents which required the development of a computer digest for document identification and retrieval. Plaintiff was represented by Ralph Wellington and Diana Donaldson (215-751-2488). The co-defendants were represented by Ronald Scherr (215-242-4081) and Patrick T. Ryan (215-988-2865).

19. Legal Activities: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived.)

1. Goodman v. Leeds & Northrup Company, et al, U.S. District Court for the Eastern District of Pennsylvania

This was a derivative suit brought by a shareholder of Leeds & Northrup Company to challenge the sale by Leeds of a substantial number of shares of Leeds' voting convertible preferred stock to my client, Cutler Hammer, Inc. Plaintiff Goodman alleged that the Leeds stock was sold to Cutler Hammer for inadequate consideration and that the Leeds directors' decision to sell to Cutler Hammer was an attempt to maintain control over Leeds in the face of a takeover attempt by Tyco, Inc. The case was resolved after Leeds was merged into General Signal Corporation and Cutler Hammer was merged into Eaton Corporation.

The suit was instituted in the District Court for the Eastern District of Pennsylvania in 1978 and was assigned to Judge Clarence Newcomer. Before the litigation was resolved there was extensive discovery and a number of interesting legal issues were addressed including the question whether the right of a Leeds shareholder to bring a derivative suit survived the merger of Leeds into General Signal.

2. Oberholtzer, et al vs. United Municipal Incinerator Corporation, et al, U.S. District Court for the Eastern District of Pennsylvania

This was a class action brought against a company, its officers and directors, alleging violations of the Securites Acts in connection with the preparation of a Prospectus. Discovery established that any alleged misstatements were made initially by the Chairman of the Corporation. I represented an outside director who resigned from the Board when he learned of the alleged misstatements. My client's role in the case raised the question whether an outside director was required to do more than resign from the Board in order to insulate himself from liability.

The litigation was brought in the District Court for the Eastern District of Pennsylvania, CA 70-3310; it was assigned to Honorable John Morgan Davis, now deceased. The case was eventually settled.

3. Graham vs. Triangle Publications, Inc., U.S. District Court for the Eastern District of Pennsylvania

This was an anti-trust action by home delivery newspaper carriers to enjoin a corporate publisher from refusing to sell and deliver a daily newspaper to plaintiffs and to recover treble damages. My firm represented the plaintiffs. The injunction aspects of the case were handled by my partners, W. Wilson White, a former Assistant Attorney General, and Richard C. Bull. After injunctive relief was denied, I took over representation of plaintiffs in the treble damages action which was then assigned to

Honorable Daniel C. Huyett. The case was settled after extensive discovery proceedings at the beginning of the trial. The opinions involving the claim for injunctive relief in which I was not involved were reported at 233 F. Supp. 825 (1964) and 344 F.2nd 775 (1965).

The case involved the question whether a newspaper publisher had the right to prohibit news dealers from imposing a service charge on customers for home delivery. The publisher refused to deal with the dealers who made such a service charge. There was no adjudication on the merits in view of the settlement.

4. Suburban General Hospital Cases, Court of Common Pleas of Montgomery County

These cases arose out of the construction of a new emergency facility at Suburban General Hospital, Norristown, PA, in which the contractor inadvertently crossed the Nitrous Oxide and Oxygen lines, resulting in injuries to a number of people and allegedly causing the death of a few of them. I represented Suburban General Hospital. Numerous defendants were joined in the action including the Hospital, architects, contractors, and physicians. Counsel for the defendants determined that it would be appropriate to try to settle all of the cases on the basis of a formula and, after numerous meetings, and extensive discovery, a formula was devised which resulted in the settlement of all cases before commencement of trial.

The cases presented significant problems of case management. I was instrumental in developing the formula by which all cases were settled without trial.

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. **List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients, or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.**

   A. Undistributed Profits for year ending December 31, 1987 - $65,526.00 - to be distributed during next six months.

   B. A share of net income for the partnership for the year in which I withdraw computed by dividing the net income for the year by 52 and multiplying the result by the number of weeks which shall have elapsed from the beginning of the year to the date of withdrawal - to be distributed during twelve months from date of withdrawal.

   C. Regular Capital - $38,918.00 - to be distributed within sixty days of withdrawal.

   D. Untaxed Capital - $253,839.00 - to be paid over a period not to exceed five years from date of withdrawal.

   The Partnership Agreement also provides for voluntary retirement at age 59½ and mandatory retirement at age 65. Upon such retirement a partner is entitled to an annual pension for life, the amount of which depends upon his years of service with the Firm and his average earnings from the Firm for his five highest consecutive years. Although I am not technically eligible for such pension because I have not yet reached age 59½, the Firm is contemplating an arrangement whereby I will be paid certain sums in lieu of the pension provided by the Partnership Agreement. It is my understanding that any Firm payments cannot be made over a period in excess of five years and, if possible, the payments should terminate at the end of three years. When the Firm agreement is finalized, I will supply the pertinent details.

2. **Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.**

   I understand that, under judicial guidelines, I will not be assigned any cases involving my Firm for a period of five years. With respect to any other conflicts I will be guided by the applicable Rules.

3. **Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.**

   No.

4. List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding $500.00 or more (If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here).

1986

Interest Income - $1,645.00

Dividend Income - $19,574.00

Business Income - (RHD) $8,009.00

Capital Gains - $15,078.00

Income from Law Partnership (JED) $223,396.00

1987

Interest Income - $1,903.28

Dividend Income - $19,188.66

Business Income (RHD) $8,282.00

Income from Law Partnership (JED) - $253,819.00 for fiscal year ending January 31, 1987; $258,875.00 for calendar year beginning February 1, 1987, less business expenses for calendar year not yet calculated.

1988

No figures available at this time.

5. Please complete the attached financial net worth statement in detail (Add schedules as called for).

See attached.

6. Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

Yes, I worked as a fund raiser during Arlen Specter's 1975 and 1979 campaigns for District Attorney and his 1977 mayoralty campaign in Philadelphia. In addition, in 1977 I assisted in preparation of press releases and worked on position papers during the mayoralty campaign. Thereafter I worked in a fund raising capacity in Arlen Specter's campaigns for U.S. Senate. I also worked as a fund raiser in Flora Becker's campaign for Congress in 1984.

CONFIDENTIAL FINANCIAL STATEMENT

NET WORTH

JAN E. DUBOIS AND RUTH H. DUBOIS

ASSETS

CASH

$5,000.00

SECURITIES

$447,700.00 (See attached lists)

1. Municipal Bonds (RHD) $53,800.00
2. Equities (RHD) $188,000.00
3. Equities (JED) $68,000.00
4. Municipal Bonds and Equities (RHD - Trust) $134,900.00

UNDISTRIBUTED PROFITS - WHITE AND WILLIAMS - YEAR ENDING 12-31-87

$65,526.00

REGULAR CAPITAL - WHITE AND WILLIAMS

$38,918.00

UNTAXED CAPITAL - WHITE AND WILLIAMS

$253,839.00

CONTRIBUTIONS TO PENSION PLAN - WHITE AND WILLIAMS
$47,941.00

401K PLAN - WHITE AND WILLIAMS

$64,105.00

HR 10 PLAN - WHITE AND WILLIAMS

$240,520.00

IRAs JED AND RHD

JED - $12,259.00

RHD - $10,288.50

LIMITED PARTNERSHIP - 11 South Letitia Street Associates (JED)

$10,000.00

CASH SURRENDER VALUE - LIFE INSURANCE POLICY - MUTUAL BENEFIT LIFE INSURANCE COMPANY (JED)

$18,500.00

REAL ESTATE - PERSONAL RESIDENCE - 643 Washington Lane, Rydal, PA

$650,000.00 (EST.)

PERSONAL PROPERTY

$275,000.00 (EST.)

TOTAL ASSETS: $2,139,596.50

LIABILITIES

MORTGAGE - HOME - PSFS

$17,977.00

PERSONAL LOAN - ADVEST

$25,000.00

CURRENT BILLS

$2,500.00

TOTAL LIABILITIES: $45,477.00

PORTFOLIO APPRAISAL REPORT

PREPARED FOR: RUTH H. DUBOIS
AS OF: 3/23/88 PAGE 1

AMOUNT	SECURITY	TOTAL COST	MARKET PRICE	MARKET VALUE	ANNUAL INCOME	CURRENT YIELD
	FIXED INCOME					
5	PENNSYLVANIA INSD MUN BD TR UNIT PINBT 32 M	5,650.35	1145.090	5,725.45	430.55	7.07%
10	PENNSYLVANIA INSD MUN BD TR UNIT PINBT 4 Q	7,568.70	547.690	5,476.90	400.30	7.31%
5	PENNSYLVANIA INSD MUN BD TR UNIT PINBT 52 M	5,741.70	1091.360	5,456.00	426.70	7.82%
20	PENNSYLVANIA INSD MUN BD TR UNIT PINBT 55 M	20,1[illegible].80	1113.620	22,272.40	1,759.40	7.90%
5	PENNSYLVANIA INSD MUN BD TR UNIT PINBT 62 M	5,000.00	973.660	4,868.30	351.00	7.21%
10,000	PENN ST BTB 12/1/76 5.80% 6/1/90	10,000.00	100.000	10,000.00	500.00	5.00%
	FIXED INCOME TOTALS	$ 54,126.75		$ 53,799.05	$ 3,967.95	7.30%
	EQUITIES					
116	AMERICAN TEL & TELEG CO	3,074.00	28.250	3,277.00	139.20	4.25%
200	BELL ATLANTIC CORP	10,350.40	70.000	14,000.00	816.00	5.83%
451	BELLSOUTH CORP	13,067.55	40.000	18,040.00	992.20	5.50%
900	BRYN MAWR BK CORP	28,350.00	28.000	25,200.00	1,100.00	4.71%
500	CONTEL CORP	15,625.00	32.125	16,062.50	1,000.00	6.23%
500	CSX CORP	14,793.72	32.125	16,062.50	620.00	3.86%
200	FPL GROUP INC	6,225.00	29.375	5,875.00	424.00	7.22%
800	GENERAL ELEC CO	9,225.00	42.625	34,100.00	1,120.00	3.28%
800	GILLETTE CO	6,675.00	42.500	34,000.00	600.00	2.02%
1,000	HEALTH-CHEM CORP	13,044.22	5.125	5,125.00	0.00	0.00%
735	KEYSTONE HERTIAGE GROUP INC	21,762.50	29.000	21,315.00	646.00	3.03%
51	MIDLANTIC CORP	2,416.12	42.125	2,148.30	75.40	3.51%
500	PENNSYLVANIA ENTERPRISES INC	24,687.50	48.750	24,375.00	1,100.00	4.51%
301	PENNWALT CORP	15,943.03	56.875	17,119.30	722.40	4.22%
51	PENNWALT CORP PF B CV $1.6 82	1,759.50	33.000	1,683.00	81.60	4.85%
765	SHAWMUT NATL CORP	21,455.47	23.625	18,073.13	979.20	5.42%
	EQUITY TOTALS	$ 209,454.01		$ 256,455.80	$ 10,572.00	4.13%
	TOTALS	$ 263,580.76		$ 310,255.72	$ 14,540.03	4.69%

INTEREST EARNING BALANCE $965.00

TOTAL $311,220.72

Merrill Lynch Pierce Fenner & Smith Inc.
Member Securities Investor Protection Corporation (SIPC)

Statement of Security Accoun

ACCOUNT #	F/C #	PAGE #	SS OR ID	TELEPHONE #
434 13797	5393	2	23-6823911	215-565-9090

RUTH H DUBOIS & ALLEN HARBERG
TTEES U/W SIDNEY HARBERG

YOUR INVESTMENTS		CURRENT PRICE	MARKET VALUE	CURR. YIELD	EST. INCOME
206	AMN ELEC POWER CO	26.875	$5536	8.70	$482
21	**AMN INFO TECH CORP	86.875	$1824	6.21	$113
24	**BELL ATLANTIC CORP	67.125	$1611	6.07	$98
54	**BELLSOUTH CORP	38.375	$2072	5.73	$119
1008	BRYN MAWR BK CORP COM	28.000	$28224	4.71	$1329
200	**CSX CORP	30.875	$6175	4.01	$248
600	**EMERSON ELEC CO	31.750	$19050	3.14	$598
14	**IMO DELAVAL INC	37.750	$528	1.48	$8
500	**NIAG MOHAWK PWR CORP	13.375	$6687	8.97	$600
24	**NYNEX CORPORATION	63.250	$1518	6.38	$97
48	**PACIFIC TELESIS GRP	28.750	$1380	6.12	$84
360	SHAWMUT NATL CORP COM	23.125	$8325	5.53	$460
286	SOUTH JERSEY IND	17.500	$5005	7.42	$371
36	**SOUTHWESTERN BELL CP	36.000	$1296	6.44	$83
146	**TRANSAMERICA CORP	34.625	$5055	5.31	$268
24	**U S WEST INC	53.250	$1278	6.15	$79
2194	METLIFE ST STR FX G INCM	11.850	$25998	9.70	$2522
	MET LIFE GOVT INC FD .4355 FRACTIONAL QUANTITY	12.050	$5		
1350	ML MCPL BD FD HI YLD	9.850	$13297	7.14	$949
	TOTAL MARKET VALUE OF PRICED INVESTMENTS		$134864		$8508

CDS CAN STILL BE ATTRACTIVE INVESTMENTS. SEE THE ENCLOSURE WHICH DESCRIBES MANY ADVANTAGES OF CDS AND OFFERS INFORMATION ON OBTAINING A NEW BROCHURE.

III GENERAL (PUBLIC)

1. **An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.**

   Since 1982, I have been active in the Philadelphia Bar Foundation, first as a Trustee, then as President-Elect, 1986, and as President, 1987. I currently serve as a Trustee. The Philadelphia Bar Foundation is the charitable arm of the Philadelphia Bar Association. As such, it supports many public service law projects which provide legal services to persons in special need who are otherwise unable to obtain them - abused children, abused women, the indigent, the elderly and many others. As a Trustee, I served on various committees including the fund raising committee and the grants committee. From 1982 through 1985 I spent on an average of one to two hours a week on such work. The time increased to two to three hours a week in 1986 and three to four or more hours a week in 1987.

2. **The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion. Do you currently belong, or have you belonged, to any organization which discriminates -- through either formal membership requirements or the practical implementatien of membership policies? Is so, list, with dates of membership. What you have done to try to change these policies?**

   Currently, I do not belong to any organizations which discriminate on the basis of race, sex, or religion. On February 12, 1988, I resigned from the Vesper Club in Philadelphia, after learning that the Club does not admit women to membership. I was recently advised that the Club is in the process of changing its membership policy and soon will admit women to membership. I was a member of the Vesper Club from approximately 1960 until my resignation.

3. **Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, did it recommend your nomination? Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and interviews in which you participated).**

   Yes. I appeared before the Federal Judicial Nominating Commission in Philadelphia in May of 1984 and December of 1986. My nomination was recommended in December of 1986.

   In June, 1987, my name was submitted to the Department of Justice by Senators Arlen Specter and John Heinz as one of five candidates for five existing or anticipated vacancies on the District Court. On June 11, 1987, I was interviewed at the Department of Justice by Stephen J. Markman, Assistant Attorney General, James I. Knapp, Deputy Associate Attorney General, and Seth Liebman, Attorney Advisor.

Thereafter, I met with Senator Specter, spoke to Senator Heinz, and either spoke to or met with county Republican leaders in Philadelphia and the surrounding counties to discuss my interest in a District Court judgeship and my qualifications for that position. Among the people with whom I spoke or met were William Meehan, Frank Jenkins, William Lamb and Thomas Judge.

On March 22, 1988, I was advised by Mr. Markman that my name was suggested to the Department of Justice for recommendation to the President for nomination to the Federal Judiciary. Since that time I have completed various forms required in connection with the nomination process. On March 28 and 30, 1988, I was interviewed by two Special Agents of the Federal Bureau of Investigation, Carl L. Turner and Scott Perkins. On April 26, 1988, I was interviewed by Jerome J. Shestack of the American Bar Association.

Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as seeking any express or implied assurances concerning your position on such case, issue, or question? If so, please explain fully.

No.

Please discuss your views on the following criticism involving "judicial activism."

The role of the Federal judiciary within the Federal government, and within society generally, has become the subject of increasing controversy in recent years. It has become the target of both popular and academic criticism that alleges that the judicial branch has usurped many of the prerogatives of other branches and levels of government.

Some of the charactertistics of this "judicial activism" have been said to include.

- **a. A tendency by the judiciary toward problem-solution rather than grievance-resolution;**
- **b. A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;**
- **c. A tendency by the judiciary to impose broad, affirmative duties upon government and society;**
- **d. A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and,**
- **e. A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.**

The function of a District Court judge, and indeed all judges, is to treat litigants in an evenhanded way, applying the law to each case, and reaching a fair decision. It is the duty of the court to protect the rights of individuals and institutions appearing before it but in the adjudication process it is important that restraint be exercised and that the judiciary not arrogate to itself the power of the legislative or executive branches of government.

The role of the Federal judiciary, particularly that of a District Court judge, is to enforce and follow the law. I am mindful of the separation of powers and do not believe Federal courts should be involved in legislating. Likewise, jurisdictional allegations should be carefully examined and, where jurisdiction is lacking, as where there is no standing or ripeness, the action should be dismissed.

The Federal judicial system is based on grievance resolution, not problem solution. A District Court judge should hear evidence relating to a grievance and apply existing law in resolving it. Restraint should be exercised in framing orders so as to avoid wherever possible far-reaching orders extending to broad classes of individuals. Likewise, any tendency by the judiciary to impose broad, affirmative duties upon government and society should be tempered so that only specific grievances are addressed and then only when mandated by law.

A District Court judge should strive to avoid the role of administrator of institutions with continuing oversight responsibilities. Rather, orders should be drafted so as to require institutions, through their administrators, to follow the direction of the court without the need for such oversight.

AFFIDAVIT

I, JAN ELY DUBOIS, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

5/11/88
(DATE)

Jan Ely DuBois
(NAME)

Kathryn A. DePaolo
(NOTARY)

KATHRYN A. DePAOLO
Notary Public, Phila., Phila. Co.
My Commission Expires March 19, 1992

CONFIRMATION HEARING ON: HERBERT J. HUTTON, ROBERT P. PATTERSON, JR., RANDALL R. RADER, AND SIMEON T. LAKE III

WEDNESDAY, JULY 27, 1988

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The committee met, pursuant to notice, at 2:40 p.m., in room SD-562, Dirksen Senate Office Building, Hon. Paul Simon (acting chairman) presiding.

Also present: Senators DeConcini, Thurmond, Hatch, and Specter.

Staff present: Steven J. Metalitz, chief nominations counsel; Ronald Legrand, chief investigator; Andrew Rainer, investigative counsel; Frank Klonoski, minority investigator.

Senator SIMON. The hearing of the committee will come to order. My apologies to all of you. We had an overrun on the last hearing.

First, I note the presence of Congressman Hamilton Fish here. I assume he is here on behalf of Mr. Robert Patterson. My former colleague in the House, Congressman Fish and Mr. Patterson, we would be pleased to have the two of you take the seats there. I will now call upon my former House colleague and we are pleased to have you over here.

STATEMENT OF HON. HAMILTON FISH, JR., A U.S. REPRESENTATIVE FROM THE STATE OF NEW YORK

Congressman FISH. Thank you very much, Mr. Chairman. It's a great pleasure to be seated at this table with Robert P. Patterson, Jr.

Earlier, Senator Moynihan and Senator D'Amato were with us and they may return. They had to leave. Senator D'Amato did give me his introductory statement.

Senator SIMON. We will enter that in the record.

Congressman FISH. I appreciate that.

[Prepared statement follows:]

STATEMENT OF SENATOR ALFONSE D'AMATO

APPOINTMENT:

ROBERT P. PATTERSON JR.

JULY 27, 1988

MR. CHAIRMAN,

I AM PLEASED TO JOIN MY COLLEAGUE SENATOR MOYNIHAN IN RECOMMENDING TO THE COMMITTEE ROBERT P. PATTERSON JR. FOR AN APPOINTMENT TO THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK.

I THINK IT IS SIGNIFICANT THAT BOB PATTERSON HAS PROCEEDED VERY QUICKLY SINCE HE WAS RECOMMENDED BY SENATOR MOYNIHAN'S JUDICIAL SELECTION PANEL. CERTAINLY IT IS A CREDIT TO THE QUALITY OF THIS APPOINTEE THAT THE PRESIDENT NOMINATED HIM SO QUICKLY.

SINCE RESUMING A COLLEGIATE CAREER AT HARVARD COLLEGE INTERRUPTED BY SERVICE IN THE U.S. ARMY AIR CORPS DURING WORLD WAR II AND GRADUATING FROM THE COLUMBIA LAW SCHOOL AS PRESIDENT OF HIS CLASS, BOB PATTERSON HAS SERVED WITH DISTINCTION AS AN ATTORNEY IN NEW YORK.

I KNOW THAT YOU ARE AWARE OF HIS 38 YEARS AS A LAWYER WHICH INCLUDED POSITIONS WITH THE ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK AND AS PRESIDENT OF THE NEW YORK STATE BAR ASSOCIATION. ADDITIONALLY, HE SERVED 14 MONTHS WITH THE NEW YORK STATE CRIME COMMISSION AND 3 YEARS WITH THE UNITED STATES ATTORNEY'S OFFICE THE SOUTHERN DISTRICT.

AS YOU REVIEW THE QUALITIES THAT BOB PATTERSON CAN BRING TO THE BENCH NOT ONLY AS A LAWYER BUT AS AN ACTIVE MEMBER OF THE SOCIAL AND INTELLECTUAL COMMUNITY IN NEW YORK, YOU WILL BE PERSUADED TO RECOMMEND HIS CONFIRMATION TO THE FULL SENATE.

HE HAS THE TEMPERAMENT, STATURE, AND HIGH REGARD OF HIS PEERS IN THE LEGAL PROFESSION - ALL QUALITIES WHICH WILL MAKE HIM AN OUTSTANDING JURIST.

THANK YOU FOR YOUR CONSIDERATION.

Congressman **Fish.** Mr. Chairman and members of this distinguished committee, it is indeed a pleasure for me to appear here today and introduce to you Robert P. Patterson, Jr., Esquire, of New York. Today you will consider his nomination to serve as a U.S. District Court judge for the Southern District of New York.

Bob Patterson has been a life-long personal friend and professional colleague of mine. We attended Harvard College together and, over the years, have been involved in a number of mutual efforts relating to the legal profession and civic matters in our State. I am also proud to point out that Bob is a constituent of mine, residing in Cold Spring, Putnam County, New York.

In World War II, Robert Patterson served as the lead navigator in Liberators and Flying Fortresses during two tours of combat duty in Africa and in Europe. Captain Patterson received the Distinguished Flying Cross with cluster and the Air Medal with clusters.

He has had a distinguished career both as a public servant and as a practicing attorney. Currently, he is a partner in the New York City law firm of Patterson, Belknap, Webb & Tyler, which he first joined in 1956. His private practice has essentially been commercial and corporate law with an emphasis on trade, antitrust, securities and patent infringement. He has litigated numerous cases, principally in the U.S. District Court for the Southern District of New York and in the New York State Supreme Court.

Bob received his law degree from Columbia University Law School in 1950. Subsequently, he served as an assistant counsel on the New York State Crime Commission and then, from 1953 to 1956, served as an Assistant U.S. Attorney in the Southern District of New York, where he was involved with numerous narcotics prosecutions.

It is a measure of the respect in which he has been held that on numerous occasions, Mr. Chairman, Robert Patterson has been called upon for exacting assignments. In 1971, he was appointed as a member of the Governor's Panel on the Attica Disturbance. In 1982, he was chosen by a three-judge panel—Federal judges—to act as a Special Master to reapportion the State of New York.

Bob has been involved in numerous efforts that stress the service dimension of the legal profession. He is a member of the Association of the Bar of the City of New York and has been deeply involved in activities of the New York State Bar Association. From 1975 to 1977, he served as the vice president of the State Bar Association and then, from 1978 to 1979, as the president of the New York State Bar Association.

He has also been active in the American Bar Association and was a member of the ABA House of Delegates. I could list dozens of panels and committees that Bob has served on which have advanced the quality of justice for us all—from serving as the director of the Legal Aid Society of New York for the past 25 years and as its president for 4 years, through membership on the Judicial Selection Committees of three United States Senators from the State of New York for the past 18 years. Based on both legal experience and personal temperament, Bob Patterson, in my judgment, is exceptionally well-qualified for the demanding job of a U.S. trial judge. He has had a broad range of legal experience in both civil and criminal matters and is a recognized expert in such criminal law issues as sentencing and prison reform. He is, in short, Mr. Chairman, a distinguished and successful attorney who will make a positive contribution to the Federal bench. Again, I want to thank you, sir, and the members of the Senate Judiciary Committee for the opportunity to participate in this hearing and I urge favorable action on this outstanding nominee.

Senator SIMON. I thank you very much Congressman Fish and Mr. Patterson. I would add that both Senator Moynihan and Senator D'Amato expressed the wish to be here but we have had some schedule conflicts. I've just been handed a note that they are both on their way here. We thank you very, very much. Thank you, Congressman Fish.

I note the presence of Senator Gramm here and we are going to take things somewhat out of order because of the schedule today. Senator Gramm, if you wish to speak here very briefly, go ahead.

STATEMENT OF HON. PHIL GRAMM, A U.S. SENATOR FROM THE STATE OF TEXAS

Senator GRAMM. Mr. Chairman, let me begin by thanking you for giving me an opportunity to speak out of order today. I have a chance to come back and testify on behalf of my friend, Sim Lake. I had this opportunity earlier this year. I thought it was important, however, Mr. Chairman, to come back and emphasize how strongly I feel about this nominee for the Federal bench.

Sim Lake is an exceptional young man. He was born on the south side of Chicago. He went to work on a more or less regular basis when he was 15 years old. He went to Texas A&M University where he was an honor student every semester in every subject. He graduated first in his class in law school at the University of Texas. He was on the Editorial Board of the Texas Law Review. He was Chief Justice of the UT student court.

He served in Vietnam with distinction as a Captain in the 23rd Infantry Division. He came back to Texas and became a partner in 1977 of Fulbright and Jaworski. When his qualifications were assessed by the American Bar, he was voted well-qualified by a unanimous vote.

Mr. Chairman, you are going to have an opportunity to hear witnesses today who are testifying in favor of the confirmation of Sim Lake and there are two of them that I wanted to mention. One is John Hill, a Democrat who was the attorney general of the State of Texas. While he served as attorney general, I think it is fair to say that he was considered by people in my State in both parties to be the best attorney general that we have ever had.

He also served as chief justice of the Texas Supreme Court from 1985 through 1988 and he resigned that position to spearhead a merit selection effort for judges in Texas. As the Chairman may well know, we elect our judges on a partisan basis in Texas.

The second person who will be testifying that I wanted to call some attention to is Larry Veselka. Larry is very active in the Democratic Party in Harris County, which is Houston. He has served as county chairman and he still serves in a county office in the Democratic Party.

Finally, Mr. Chairman, I wanted to remind the committee of a statement submitted on May 16, which is when Sim first was presented to the committee by my colleague, Senator Bentsen, in which he said, "I wanted to express my strong support of the nominations of Richard Schell and Sim Lake. They possess solid qualifications, sound character, and judicial temperament."

I could read testimony submitted by various individuals, Mr. Chairman, but let me say that I have had an opportunity to come before this committee many times to introduce people recommended by me and nominated by the President for the Federal bench. I have made a conscientious effort to recommend to the President only the highest quality people that I could find.

I believe that Sim Lake is clearly one of the most outstanding people that I have ever recommended or that the President has ever nominated for this position in Texas. A final point that I would like to make is that we have a crisis condition in the Southern Judicial District of Texas. We have lost three full-time judges in the last 6 months—one to death, one to senior status, and one to resignation.

We now face a situation where the average judge in the south Texas district has 1,335 civil cases and 87 criminal cases on his or her docket. That compares to a national average of 116 and 50 and it means that the southern district of Texas is the most backlogged, the busiest district in the United States.

So, Mr. Chairman, I believe this is an outstanding young man. I strongly recommend him to you. I urge the committee to ask him any question you want to ask him; to listen closely, not only to what he says, but to what others in Texas, including the former attorney general and chief justice of the Supreme Court and the former chairman of the Harris County Democratic Party, have to say about Sim Lake's character and about his qualifications.

Mr. Chairman, I want to thank you for holding this additional hearing to give us an opportunity to present the facts so that the committee can act.

Senator SIMON. We thank you very much, Senator Gramm, and we will be back to you before very long about Mr. Lake.

We are pleased to have Senator Thurmond join us. Unless he has some opening remarks, we will ask all the nominees, Mr. Hutton, Mr. Patterson, and Mr. Rader to come forward.

Senator THURMOND. Mr. Chairman, I do not have any opening remarks. I am familiar with the nominee Mr. Lake here and I think he is well-qualified and I do not have an opening statement. Thank you very much.

[Statement of Senator Heinz follows:]

Remarks of Senator John Heinz
Beofre Senate Judiciary Committee
Nomination of Herbert Hutton, Esq.
U.S. District Court for Eastern District
of Pennsylvania
July 27, 1988

Mr. Chairman, it is a pleasure to join with my colleague, Senator Specter, to introduce to the Committee Herbert Hutton, the President's nominee to fill a vacancy on the U.S. District Court for the Eastern District of Pennsylvania.

For the past 26 years, Herb Hutton has been engaged in a general litigation practice. His experience as a trial attorney has been exceptionally broad, encompassing both criminal and civil matters, ranging from homicide cases to eminent domain proceedings. In the course of this work, he has earned the respect and admiration of the local bar association and of the judges before whom he has practiced.

In recent years, Herb Hutton has added to his activities in private practice other important responsibilities. In 1982, the Board of Judges of the Court of Common Pleas in Philadelphia appointed him to a six year term as a member of the Board of Revision of Taxes and Board of Viewers in Philadelphia.

Nor was this the first time that he was sought out for similarly important responsibilities. The same local Board of Judges also appointed him as a member for life of the Board of Directors of City Trusts, which among other things administers Girard College in Philadelphia and the nationally famous Wills Eye Hospital.

In addition, in 1986 Herb was nominated by Governor Dick Thornburgh (and subsequently confirmed by the Pennsylvania Senate) to serve a four year term as a Commonwealth trustee as Lincoln University, his undergraduate alma mater.

Herb Hutton's involvement with local community service organizations is less well known, but is a testament to his concern and compassion. He is a past president and member of the Board of Directors of both the Philadelphia Tribune Charities and the Philadelphia Council for Community Advancement.

A graduate of the Temple University School of Law, Herb is also a member of the Board of Governors of the Philadelphia Bar Association and the 1982 recipient of the Bar Association's medal for outstanding service.

Mr. Chairman, Herb Hutton was recommended for this vacancy by Senator Specter and me as a result of his being singled out by the independent judicial merit selection commission that we established several years. In addition, the American bar Association has judged him qualified to be confirmed to serve on the U.S. District Court.

I believe that Herb Hutton possesses the requisite qualifications and qualities to fulfill the responsibilities for which the President has nominated him. I urge the Committee to act expeditiously and favorably on his nomination to the District Court for the Eastern District Court of Pennsylvania.

Senator **Simon**. Okay. Will the three of you, Mr. Hutton, Mr. Patterson, and Mr. Rader please come forward? Will you raise your right hands?

Do you swear to tell the truth, the whole truth and nothing but the truth, so help me God?

Mr. **Hutton**. I do.

Mr. **Patterson**. I do.

Mr. **Rader**. I do.

TESTIMONY OF HERBERT J. HUTTON, PHILADELPHIA, PA

Senator **Simon**. Mr. Hutton, if I may start with you. You have a good record for having done some work for the less fortunate. That is to your credit. One of the things we almost routinely ask people is whether they have done pro bono work.

Do you feel that that pro bono work you have done is going to make you a better judge?

Mr. **Hutton**. Senator Simon, Senator Thurmond, first may I say I am delighted to be here today. With your permission, I would like to introduce my wife and family who are behind me.

Senator **Simon**. You bet and I would have been asking you to do that later anyway.

Mr. **Hutton**. If I do not, I will have to go home alone.

Senator **Simon**. Please feel free to do that.

Mr. **Hutton**. Right behind me, Senator, is my wife of 27 years and behind her, my daughter, Deborah; my son, Jeff; and my son, Brandon. Thank you.

Senator **Simon**. We thank all of you for being here and we are very pleased to have you here.

Mr. **Hutton**. Thank you, sir.

In response to your question, I believe that any individual in any discipline in any work has a responsibility, not only to try to excel in that work, but also to take whatever skills that work has provided and, in some fashion, provide pro bono, for want of a better word, or community service or civic responsibility to benefit from it.

I just think that that is a responsibility, not only of lawyers, but I think that is a responsibility of anyone who has a specific skill. I think physicians have that responsibility. I think teachers have that responsibility. So, I do not look upon it particularly as a responsibility of the bar alone, but as a citizen's responsibility.

As to whether or not, sir, it would make an individual a better judge, I think the more one is involved in humanity generally, the more one is better able to judge others. So, I would say yes to that question.

Senator **Simon**. Part of the Canon of Ethics of the American Bar Association for judges is that they do not belong to organizations that do discriminate. Some black organizations or Hispanic organizations or women's organizations grew out of the discrimination practiced by others.

I notice that you are a member of the Sigma Pi Phi fraternity. Do you see any problem with that and the Code of Ethics?

Mr. **Hutton**. The Sigma Pi Phi fraternity, Senators, is the first and oldest graduate black fraternity in the United States of America established in 1904. It has continually existed since that time. Presently, several very distinguished sitting black Federal jurists are members of Sigma Pi Phi fraternity, as I am.

Its mission is to interdigitate among its membership the disciplines of the members, which are varied. It is not just lawyers who are members. There are physicians, dentists, college professors, college presidents, so forth and so on. Through monthly meetings and through conventions once or twice a year where families participate, and they have speakers of a common interest—civic, political, as well as social speakers on issues of the time.

The organization is made up of families as such. It is not a men's organization as one would say a private club is, where only men can participate in the activities. My wife and family participate.

Senator SIMON. Are there women members?

Mr. HUTTON. The women members are called Archouzi in the Greek word, and the men are called Archons in the Greek word. So, the wife and the husband are——

Senator SIMON. My Greek is not very good. You will have to—does that mean that they are members or not members?

Mr. HUTTON. They are members in the sense that they are listed in the directory—their names, their occupations and they have meetings within the organization. They have a mission of providing activities for the benefit of the membership as do the men and they meet at the same time the men meet. Of course, the men pay the dues, sir, as in most organizations and I only pay those dues which I am allowed to pay. But she is a member as well as I being a member.

The bylaws and constitution contain no prohibitions whatsoever regarding the gender of membership. I would suspect, with the enlightened nature of the membership, that were an individual, a woman, to apply for membership, her membership would be granted, if she met all other qualifications and the only other qualification is that she be a graduate having earned an undergraduate degree from an accredited college.

Senator SIMON. I think it is an area that you may want to take a look at because it is an area that some of the members of our committee have been somewhat sensitive to and for reasons which I think you appreciate.

Mr. HUTTON. I do, sir, I do.

Senator SIMON. One final question and then I will yield to my colleague. I note that almost all your experience in the courts is with the State courts, rather than the Federal courts.

Mr. HUTTON. That is correct. A good 90 percent of my career has been spent, in 25 years, in the State courts.

Senator SIMON. Do you feel that there will be any problem in dealing with the Federal courts?

Mr. HUTTON. Well, I have had two or three significant matters in my career in the Federal courts and I do believe that the resources available through the Federal Judicial Center, as well as the in-house resources available to newly appointed Federal judges, and my years of experience will enable me to be up to speed in very short order.

I do not think that the adjustment period would be more than the adjustment period for anyone else similarly situated and I would think that would be a matter of weeks, as opposed to months, Senator. I am not the least bit concerned about that aspect of it.

I am challenged, quite naturally, by this opportunity and would approach it with the zeal of a first-year law student, so to speak, because it is a magnificent opportunity and represents to me the grandest opportunity that could be afforded an attorney, to practice in the Federal courts and to be a jurist of the Federal courts.

Senator SIMON. Senator Thurmond.

Senator THURMOND. Thank you, Mr. Chairman. It is good to have you back.

Senator SIMON. Thank you.

Senator THURMOND. Mr. Hutton, I was looking over your résumé here and I notice that you graduated from Lincoln University, A.B., and Temple University, J.D. I see you were admitted to the bar in 1963, I believe.

Mr. HUTTON. That is correct, sir.

Senator THURMOND. You have had considerable experience here as a realty specialist, practicing law, and the Board of Revision of Taxes and Board of Review Appeal Hearing Officer.

What was the nature of that from 1982 to the present? The Board of Review of Taxes and Board of Review Appeal Hearing Officer?

Mr. HUTTON. Senator Thurmond, the Board of Review of Taxes of the City of Philadelphia is made up of seven individuals who serve as quasi-judicial officers.

Senator THURMOND. Is it State-wide?

Mr. HUTTON. City-wide, sir, the City of Philadelphia, and it hears all 500,000 and some potential appeals from property owners. The Board of Review sits and hears all cases involving eminent domain matters for the City and County of Philadelphia, whether those eminent domain matters are initiated by a State or a City, through the Highway Department or through the Redevelopment Authority.

We hear all those appeals, sir, and we determine whether or not there have been, in fact, takings. If there have been takings, we apply the Article IV requirement for just compensation. Having been paid, we make an award and we sit in lieu of the Court of Common Pleas, which is the trial division, sir, of Philadelphia, PA, and in that capacity serve in their stead, so to speak.

It is an appointed position and it is appointed by the judges of the Court of Common Pleas for 6-year terms.

Senator THURMOND. Have you tried cases in civil and criminal court?

Mr. HUTTON. Yes, sir. For the first 10 years of my practice, I was a criminal lawyer and thereafter, my practice turned civil and for the last 15 years, I have been primarily a civil trial lawyer.

Senator THURMOND. Generally, young lawyers start out in the criminal court because you make a reputation that way.

Mr. HUTTON. That is exactly correct.

Senator THURMOND. Influence people.

Mr. HUTTON. That is right.

Senator THURMOND. And then when you want to make money, you turn to the civil courts. [Laughter.]

Mr. Hutton, now your experience has been all in the State courts?

Mr. HUTTON. Primarily, sir, yes.

Senator THURMOND. You would not encounter any trouble, do you think, in adjusting? Of course, you have studied the rules well in the Federal courts and so forth, but as a matter of trying cases, it should not make much difference whether it is in the Federal or State courts?

Mr. HUTTON. No, I believe not, Senator. I believe that is a uniform skill and after awhile, it is just a question of applying the rules to the skill.

Senator THURMOND. One of the characteristics of judicial activism is said to include a tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.

Would you give the committee your views on this criticism?

Mr. HUTTON. Well, I think the criticism——

Senator THURMOND. We have got three branches of Government.

Mr. HUTTON. Yes, sir.

Senator THURMOND. Legislative, Congress, to make the laws; the executive, headed by the President, to administer the law; and the Supreme Court and inferior courts to interpret the law. Some of these Federal judges have gone and have taken over school districts, have taken over hospitals, have taken over prisons, and have taken over State institutions in running those institutions.

After all, you know, Federal judges have got all the power they want. They do not have to take over institutions. It would have to be something very extraordinary for them to try to use that power.

So, I just want to see how you feel about judicial activism. Are you satisfied to interpret the law and follow *stare decisis* of previous decisions?

Mr. HUTTON. Most definitely, Senator. I have been fortunate in that in my experience, I have served on the Board of Trustees of one university, one college, one internationally-known and respected ophthalmological hospital. As a result of that, I have been in working relationships with people who have the awesome responsibility of administering these institutions.

In that capacity, you soon gain a very keen respect for the skills that are necessary to run major institutions of any kind, whether they be eleemosynary institutions or whether they be colleges or businesses. So, in that respect, I have come to realize that no individual, regardless of their ascension to the bench, can suddenly, by reason of that awesome responsibility, suddenly have gained skills and talents in other areas that have to do nothing with the skills and talents which caused the elevation to the bench.

So, I would follow the law as a trial judge and I would be very reticent regarding getting involved in the operation of any kind of institution on a day-to-day basis because I do not think that I have the skills to do the job properly. So, I would not do such a thing.

Senator THURMOND. Another thing, too, is I have seen some Federal judges yell at lawyers and witnesses and other people. I do not know whether they are just trying to flaunt their power or not. But the higher a man gets in life, in my opinion, the humbler he ought to be. Now, a Federal judge has tremendous power, the power of life and death. He has got all the power anybody in the world could want.

Do you think you could exercise that power in a very humble manner?

Mr. HUTTON. Senator, in my experience and having a reputation in the community as an attorney for over 25 years, I think I am definitely regarded as an individual who is both balanced and stable and I would not, in one shape or another, ever abuse the tremendous responsibility and honor to serve as a trial judge in the Federal system. So, I would not, at the least, abolish that as my goal and I would never, in any way, shape or form, embarrass my office or my reputation.

Senator THURMOND. I think you are well-qualified and I would be glad to support your nomination here and I hope the Democratics will bring it out as soon as they can.

Senator SIMON. All right.

Senator THURMOND. Thank you very much.

Senator SIMON. Thank you, Senator Thurmond. I would be pleased now to call on Senator Hatch and Senator Specter. I would point out that we just had the second series of bells. I do not know if you want to speak before we recess briefly.

Senator HATCH. Let me just say one word. Mr. Hutton, I just want to congratulate you and your family on this excellent appointment and nomination and tell you that I am going to support you and do everything that I can to see that you are confirmed before the next month or so is up.

Mr. HUTTON. Thank you, Senator.

Senator HATCH. So, we appreciate your willingness to serve. We know it is a sacrifice in many ways, but we also know that it is a wonderful opportunity to serve as well. So, I just want to commend you and congratulate you at this time.

Mr. HUTTON. Thank you, Senator Hatch.

Senator SIMON. Let me just add—Senator Heinz was also planning to join us but things got shifted around in the schedule. Senator Specter.

Senator SPECTER. Well, I had planned to be here earlier, but was downstairs with Mr. Dennis. The hearing just now broke.

I have known Herb Hutton for more than two decades. He is an extraordinarily well-qualified man. Senator Heinz and I have recommended him to the President based upon our nominating panel's recommendation and if it were not for the fact that there are only a few minutes left on this vote, I would very much like to have a picture taken with you. I would have a great deal to say about you, Mr. Hutton, but it will have to await another day.

Mr. HUTTON. Thank you, Senator. I appreciate it.

Senator SIMON. We will stand in recess for approximately 10 minutes.

[Recess.]

Senator SIMON. The committee hearing will resume.

Our next witness is Mr. Robert Patterson.

TESTIMONY OF ROBERT P. PATTERSON, JR., NEW YORK, NY

Senator SIMON. Mr. Patterson, do you have any relatives or friends here you wish to introduce?

Mr. PATTERSON. I do, Senator. My wife is here, Bevin. She was here.

Senator SIMON. We have news for you, Mr. Patterson. [Laughter.]

Mr. PATTERSON. My two daughters, Margaret and Katherine; my three sisters, Susan, Lee and Virginia; and my secretary, Kathleen Halbet.

Senator SIMON. We are happy to have all of you with us here.

Senator DeConcini has joined us. I do not know if you care for any opening statement or anything.

Mr. Patterson, you have a sizeable amount of pro bono work, I am pleased to say. One of the things I noticed is you are the President of the Legal Aide Society. We just had a vote on legal aid here about an hour ago. I do not expect you to comment on the pending amendment.

What is the significance of legal aid in our society today?

Mr. PATTERSON. Well, in New York City where I come from, it is essential that there be legal services for people who are unable to afford a lawyer. As you know, we have a growing homeless problem. We have a lot of people who are in danger of homelessness by their virtue of eviction. We have all sorts of problems involving consumer rights and problems which have to do with the basic necessities of life.

A number of these people cannot speak English or are inarticulate and do not know their rights. It really, in terms of having a just society in our city, having adequate legal representation is essential. That is on the civil side and I directed myself to the civil side.

The Legal Aid Society also represents children and guardians and does representation on the criminal side as well.

Senator SIMON. You were a member of the Century Club and I note that you have resigned.

Could you explain why you have resigned?

Mr. PATTERSON. Well, a number of judges are members of the Century Club, but it occurred to me that because of the way in which it is perceived—and it has taken on a perception that is quite different than it was when I joined it—it was purely a social club and understood to be such. It developed that it was being used for business.

It occurred to me that if I was going to be appointed a judge, that female litigants and female attorneys—it does not discriminate against blacks or Hispanics or people of other groups—or it did not. I believe now it had passed an amendment that stated that depending on the outcome of the Supreme Court decision, it would admit women.

But it occurred to me that female litigants and female attorneys might feel, with a judge who was new to the bench and whom they did not know and were not able to evaluate his or her fairness in these matters, that they should not be under the misperception that the judge might discriminate in their matter. Accordingly, I resigned and tendered my resignation before the Supreme Court decision came out.

Senator SIMON. I think you did the right thing and I commend you for doing it.

In the process of going through this business of being nominated, has anyone asked you anything at the Justice Department that you felt was inappropriate?

Mr. PATTERSON. Well, there were questions asked me in the Justice Department that had to do with my philosophy—what my judicial philosophy would be. I do not think that they are inappropriate necessarily. I heard questions this morning asked of Mr. Hutton, which were of a similar nature, having to do with judicial restraint or judicial activism.

I suppose that that is something that is within the prerogative of the legislative and executive branches. And I have been around a long time so that I have a thick skin. I suppose if I had been a younger person, I might have taken offense, but I did not take offense.

Senator SIMON. But when you say questions about your judicial philosophy, how were those questions framed?

Mr. PATTERSON. Well, mainly in terms of judicial—what I believed in terms of judicial restraint. There was some discussion—and I do not have a clear memory of this—but there was some discussion of the death penalty. I did not have any hesitancy about answering their questions.

Senator SIMON. But you were asked what your basic attitude was toward the death penalty?

Mr. PATTERSON. Yes.

Senator SIMON. Senator Hatch.

Senator HATCH. Actually, I am very satisfied with this nominee and I just want to tell you that I am going to support you and I wish you the very best and look forward to seeing you serve this country on the bench. So, I appreciate you being here and I congratulate your family and you for this wonderful opportunity to serve our country.

Mr. PATTERSON. Thank you, Senator.

Senator SIMON. Senator DeConcini.

Senator DECONCINI. Thank you, Mr. Chairman. I join the Senator from Utah in congratulating what I think is a fine candidate presented to us here and thank you very much for your candid remarks to the Chairman regarding the selection process. We are not interested in telling the executive in how to do it, but we are interested in knowing how they go about doing it and it is helpful to this Senator to hear your candid responses to that and I think what I read here and see, I think you are very, very qualified and look forward to your confirmation.

Mr. PATTERSON. Thank you, Senator.

Senator SIMON. We thank you very, very much, Mr. Patterson.

Mr. PATTERSON. Thank you, Senator.

[Written questions and answers follow:]

JOSEPH R. BIDEN, JR., DELAWARE, CHAIRMAN
EDWARD M. KENNEDY, MASSACHUSETTS
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United States Senate
COMMITTEE ON THE JUDICIARY
WASHINGTON, DC 20510-6275

July 29, 1988

Robert F. Patterson, Jr., Esq.
Patterson, Belknap, Webb and Tyler
30 Rockefeller Plaza, Suite 3500
New York, NY 10028

Dear Mr. Patterson:

In order to supplement the record of the hearing before the Senate Judiciary Committee on July 27, 1988, on your nomination to be United States District Judge, please provide written answers to the enclosed additional questions submitted by Senators Grassley and Humphrey.

Your answers should be accompanied by your attestation of their accuracy. Please deliver your answers to the Judiciary Committee in Room SD-224, Dirksen Senate Office Building, Washington, D.C. 20510. Any questions concerning this request should be directed to Steven J. Metalitz, Chief Nominations Counsel to the Committee, at (202) 224-8191.

I regret that your testimony before the Committee on July 27 was unavoidably delayed to await the conclusion of another hearing, and by roll call votes on the Senate floor which required the attendance of Committee members. I hope this delay did not cause any undue inconvenience to you or members of your family who attended the hearing.

Thank you for your continued cooperation with the Committee in its consideration of your nomination.

Sincerely,

Paul Simon

PAUL SIMON
United States Senator

SENATE JUDICIARY COMMITTEE
HEARINGS ON JUDICIAL NOMINATIONS
JULY 27, 1988

Questions Submitted for the Record by Senator Humphrey
To Be Answered by Robert Patterson, Jr.

1. Your response to the questions concerning judicial activism, set forth in Part III, Question 3 of the Judiciary Committee Questionnaire, raises concerns for me regarding your sensitivity to this important issue. With respect to your responses to the judicial activism questions:

a. Your responses seem to indicate that you do not believe that the questions concerning judicial activism even raise significant or legitimate concerns. In contrast, most of the judicial nominees confirmed during this Congress have acknowledged the significance of the problem and stressed the critical importance of judicial restraint. How do you explain your distinctly different response to this question?

b. You state in your response that, "Most judges are aware of the fact that their powers are of limited effectiveness and aware of the difficulty, if not impossibility, of effecting more than a grievance resolution of disputes between the parties." What is the basis for this factual assertion? Is it based upon your conversations or dealings with specific judges, upon a survey or report, or simply your own intuition? How do you square your statement with the fact that judicial assertion of "continuing jurisdiction" under decrees and court orders (e.g., in prison reform and school desgregation cases) has vastly expanded in the past 25 years and placed federal judges in a supervisory role that expands far beyond "grievance resolution" between the original parties?

c. You reject the suggestion that the courts have used the class action procedure as a vehicle for the imposition of far-reaching orders extending beyond the grievance of the individual plaintiffs. Yet the Supreme Court, notably in *General Telephone Company v. Falcon*, 457 U.S. 147 (1982), has found it necessary to admonish and correct the lower courts for their over-expansive, "across-the-board" application of class action procedures. (1) Do you agree with the Supreme Court's analysis in *Falcon?* (2) Will you strictly adhere to *Falcon's* requirement of strict application of Rule 23 class certification requirements in putative class actions coming before you, if you are confirmed? (3) What are your views on how much should be required of putative class action representatives in producing evidence demonstrating compliance with the numerosity, typicality, adequacy, and commonality requirements of Rule 23, Federal Rules of Civil Procedure?

d. You state, "The judiciary generally, and district judges certainly, are not in a position to impose broad affirmative duties upon governments and society." Yet it is a matter of public knowledge that in recent years federal district court judges have exercised such powers as ordering local governments to impose additional taxes to fund affirmative duties under school reorganization orders; imposing enormous financial burdens on state and local governments under prison reform orders; and directing city councils, under pain of fine or imprisonment, to approve and fund the erection of housing projects in residential communities.

(1) When you made the above-quoted assertion, did you consider the occurence of judicial actions such as those mentioned above?

(2) Is it your position that judicial actions such as those described above do not "impose broad affirmative duties upon governments and society"? If so, please explain your answer with reference to the examples given above.

(3) I think it is fair to say that your above-quoted statement is factually inaccurate. Do you adhere to this statement, in light of examples of the type given above?

(4) Those nominated to the powerful position of federal district judge should have a keen awareness that the imprudent exercise of their powers can have enormous adverse consequences for individual citizens and for society. Your responses to the questions on judicial activism raise questions as to whether you have that keen awareness. Do you have any comment to make in response to this concern?

2. In your testimony, you were asked to comment concerning whether officials of the Justice Department had asked questions, in connection with your nomination, which you considered inappropriate. Although a transcript of the hearing is not yet available, I understand that you answered to the effect that you would have objected to some of the questions asked by Justice Department officials if you were less experienced or less "thick-skinned." I also understand that you mentioned questions concerning your views on capital punishment as an example of questions you might have considered objectionable.

a. Supreme Court nominee Robert Bork, and many other judicial nominees have been asked extensive, probing questions concerning their views on specific legal and consitutional issues by members of this Committee in the confirmation process. Justice Anthony Kennedy was asked specifically for his views on capital punishment issues by Senator Byrd, Senator

Heflin, and this Senator in his confirmation hearings. Do you consider such questioning inappropriate?

b. If not, do you consider it any less appropriate for the President, or his appointees in the Justice Department, to ask the same kind of questions? Please explain your answer, including a specific response to the question of why the President should not be able to inquire into the views of his judicial nominees on significant issues of law.

c. Do you agree with the position of the U.S. Supreme Court, as established in numerous post-_Furman_ precedents, that capital punishment is not prohibited by the Eighth Amendment to the Constitution or any other Constitutional provision? Or do you adhere to the contrary position of Justices Marshall and Brennan, that capital punishment is in all cases cruel and unusual punishment, prohibited by the Eighth Amendment?

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United States Senate
COMMITTEE ON THE JUDICIARY
WASHINGTON, DC 20510-6275

July 28, 1988

Honorable Patrick J. Leahy
United States Senate
Washington, D.C. 20510

Dear Pat:

I regret being unable to attend our most recent judicial nominations hearing yesterday afternoon. I would appreciate it if you would submit the following written questions to Robert P. Patterson, Jr., for his written response.

Thank you for your kind attention to this request.

Sincerely,

Charles E. Grassley
United States Senator

QUESTIONS FOR ROBERT P. PATTERSON, JR.

1. During your appearance before the Committee on July 27, you suggested that representatives of the Justice Department improperly questioned you about specific issues that may come before the court. You further suggested that you were bothered, or even offended, by these questions.

Please explain your statements in detail. Specifically, what was asked? How did you respond? Why were you offended?

2. In a response to the Committee questionnaire, you state that your partnership interest and severance agreement with Patterson, Belknap, Webb & Tyler is "to be negotiated".

(a). What is the status of these negotiations?

(b). When do you expect the issue to be resolved?

(c). Will you make the information available to the Committee?

3. As a member of the firm of Patterson, Belknap, Webb & Tyler, you are a partner of Harold R. Tyler, Jr., Chairman of the ABA Standing Committee on the Federal Judiciary.

(a). Were you interviewed by representatives of the ABA Standing Committee? Please provide the date and name[s] of any interviewer[s]. What was the substance of those interviews? How long in duration were the interviews?

(b). Did you discuss your evaluation by the ABA Standing Committee with Mr. Tyler? If so, what was the substance of that discussion?

(c). What role, if any, did Mr. Tyler play in the ABA evaluation process for your nomination?

(d). How long did the ABA evaluation process take?

4. I find your response to the Committee questionnaire on the subject of judicial activism to be, frankly, quite troubling. Indeed, I find it to be decidedly impertinent, in that it mocks the question's premise by suggesting that judicial activism is an "unwarranted" creation "of the media".

(a). Do the terms "judicial activism" and "judicial restraint" have meaning to you, or are they mere labels based on perceptions? Please explain.

(b). What do you believe is the proper role of a federal judge in our democratic society? Explain fully please.

(c). Does the fact that Article III judges serve for life and are otherwise unaccountable to the democratic branches of government require that judges exercise judicial restraint? If not, why not?

(d). If you are confirmed by the Senate and are faced as a judge with a conflict between your conscience and the "letter" of a duly enacted law, which would you favor? Please explain your analysis.

(e). How important is the Constitution's "case or controversy" requirement for Article III courts? Under what circumstances may federal courts relax this standard?

(f). In a volume titled "The Nature of the Judicial Process", Justice Cardozo wrote:

> ... the judge, even when he is free, is still not wholly free. He is not to innovate at pleasure. He is not a knight-errant, roaming at will in pursuit of his own ideal of beauty or of goodness. He is to draw his inspiration from consecrated principles. He is not to yield to spasmodic sentiment, to vague and unregulated benevolence. He is to exercise a discretion informed by tradition, methodized by analogy, disciplined by system, and subordinated to 'the primordial necessity of order in the social life'. Wide enough in all conscience is the field of discretion that remains.

What do you think Justice Cardozo meant by these words? Do you agree?

(g). Thomas Jefferson once wrote: "Our peculiar security is the possession of a written Constitution. Let us not make it a blank paper by construction."

What do you think he meant by this? Do you think this statement, by a principal author of the Constitution, suggests that the Constitution should be strictly construed, or that an "interpretivist" approach to Constitutional analysis is most appropriate?

(h). Compare Justice Brennan's interpretation of the Constitution. He has written that in some cases, a justice may perceive the community's "interpretation of the text to have departed so far from its essential meaning that he is bound by a larger constitutional duty to the community, to expose the departure and point toward a different path." To determine the Constitution's "essential meaning", Justice Brennan would rely on what he believes is the "aspiration to social justice, brotherhood, and human dignity that brought this nation into being."

Which of these views -- Jefferson's or Brennan's -- comes closest to your understanding of how the Constitution should be interpreted?

(i). In response to the Committee questionnaire you stated:

> I do recognize that in a limited number of cases ... judges have reluctantly found that a significant number of citizens of the United States are not being afforded their constitutional rights due to long-standing disregard of those rights by the institutions involved ... I fail to see what other course of action should be followed.

Can you provide specific examples where you believe such court-imposed relief to have been appropriate?

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August 2, 1988

Honorable Paul Simon
Committee on the Judiciary
United States Senate
Dirksen Senate Office Bldg. - Room SD-224
Washington, D.C. 20510-8276

Dear Senator Simon:

I enclose my responses to the questions submitted for the record by Senators Grassley and Humphrey.

I appreciate the courtesies extended to me and my family during the confirmation hearings.

Yours sincerely,

Robert P Patterson Jr

Robert P. Patterson, Jr.

Enclosures

August 2, 1988 ROBERT P. PATTERSON, JR.

SENATE JUDICIARY COMMITTEE
HEARINGS ON JUDICIAL NOMINATIONS
JULY 27, 1988

**Questions Submitted for the Record by Senator Humphrey
To Be Answered by Robert Patterson, Jr.**

1. Your response to the questions concerning judicial activism, set forth in Part III, Question 3 of the Judiciary Committee Questionnaire, raises concerns for me regarding your sensitivity to this important issue. With respect to your responses to the judicial activism questions:

a. Your responses seem to indicate that you do not believe that the questions concerning judicial activism even raise significant or legitimate concerns. In contrast, most of the judicial nominees confirmed during this Congress have acknowledged the significance of the problem and stressed the critical importance of judicial restraint. How do you explain your distinctly different response to this question?

My response to Part III, Question 3 of the Judiciary Committee Questionnaire is not intended to suggest there should not be legitimate concern about judicial activism. As my testimony before the Committee made clear, it is a legitimate concern. There is also no doubt that judicial restraint is an extremely important principle for judges. In my view the great majority of "the judiciary" (the term used in Question 3) exercises judicial restraint rather than shows a "tendency" to the contrary. My response was intended to address this point.

b. You state in your response that, "Most judges are aware of the fact that their powers are of limited effectiveness and aware of the difficulty, if not impossibility, of effecting more than a grievance resolution of disputes between the parties." What is the basis for this factual assertion? Is it based upon your conversations or dealings with specific judges, upon a survey or report, or simply your own intuition? How do you square your statement with the fact that judicial assertion of "continuing jurisdiction" under decrees and court orders (e.g., in prison reform and school desegregation cases) has vastly expanded in the past 25 years and placed federal judges in a supervisory role that expands far beyond "grievance resolution" between the original parties?

My response was based on my years of experience at the bar, conversations and dealings with judges and general observations. Orders containing continuing jurisdiction provisions, if and when warranted, should be limited in scope to the relief to which a party is entitled. The continuing jurisdiction provision has long been contained in judicial decrees involving injunctive relief, e.g., antitrust decrees Its expanded use, due in part to the authorization of class actions, sometimes requires judges to assume supervisory responsibilities, particularly in prison reform and school desegregation cases. These responsibilities are difficult and time-consuming. They are generally assumed as a last resort in a final attempt to reach a satisfactory resolution between the parties.

c. You reject the suggestion that the courts have used the class action procedure as a vehicle for the imposition of far-reaching orders extending beyond the grievance of the individual plaintiffs. Yet the Supreme Court, notably in General Telephone Company v. Falcon, 457 U.S. 147 (1982), has found it necessary to admonish and correct the lower courts for their over-expansive, "across-the-board" application of class action procedures. (1) Do you agree with the Supreme

Court's analysis in Falcon? (2) Will you strictly adhere to Falcon's requirement of strict application of Rule 23 class certification requirements in putative class actions coming before you, if you are confirmed? (3) What are your views on how much should be required of putative class action representatives in producing evidence demonstrating compliance with the numerosity, typicality, adequacy, and commonality requirements of Rule 23, Federal Rules of Civil Procedure?

(1) I agree with the General Telephone Company v. Falcon decision.

(2) I would expect to adhere to its requirements unless Congress or the Supreme Court imposes other requirements.

(3) Class action pleadings (which are subject to Rule 11 sanctions) should contain such requirements as allegations. For class action certification, putative class action litigants should be required to prove the allegations containing those requirements if contested.

d. You state, "The judiciary generally, and district judges certainly, are not in a position to impose broad affirmative duties upon governments and society." Yet it is a matter of public knowledge that in recent years federal district court judges have exercised such powers as ordering local governments to impose additional taxes to fund affirmative duties under school reorganization orders; imposing enormous financial burdens on state and local governments under prison reform orders; and directing city councils, under pain of fine or imprisonment, to approve and fund the erection of housing projects in residential communities.

(1) When you made the above-quoted assertion, did you consider the occurrence of judicial actions such as those mentioned above?

No. Part III, Question 5, asked my views on "a tendency by the judiciary to impose broad, affirmative duties upon governments and society." I interpreted that language more broadly than your question assumes. The examples in your question, in my view, relate not to a tendency by the judiciary in general to impose broad affirmative duties on governments and society, but to orders by individual judges requiring specific affirmative acts by government officials or agencies. I do not believe there is a tendency in most judges to issue such orders, but that such orders are issued as a last resort.

(2) Is it your position that judicial actions such as those described above do not "impose broad affirmative duties upon governments and society"? If so, please explain your answer with reference to the examples given above.

No. The orders you describe would have broad effects.

(3) I think it is fair to say that your above-quoted statement is factually inaccurate. Do you adhere to this statement, in light of examples of the type given above?

No. I believe my answer is a fair answer to the question as I interpreted it. On the other hand, although I am not familiar with the facts and circumstances of the specific cases to which you refer, a court ordering local governments to impose additional taxes or spend monies seem questionable to me.

(4) Those nominated to the powerful position of federal district judge should have a keen awareness that the imprudent exercise of their powers can have enormous adverse consequences for individual citizens and for society. Your responses to the questions on judicial activism raise questions as to whether you have that keen awareness. Do you have any comment to make in response to this concern?

None, other than those contained in the answers above and those in response to the questions of the Committee.

2. In your testimony, you were asked to comment concerning whether officials of the Justice Department had asked questions, in connection with your nomination, which you considered inappropriate. Although a transcript of the hearing is not yet available, I understand that you answered to the effect that you would have objected to some of the questions asked by Justice Department officials if you were less experienced or less "thick-skinned." I also understand that you mentioned questions concerning your views on capital punishment as an example of questions you might have considered objectionable.

a. Supreme Court nominee Robert Bork, and many other judicial nominees have been asked extensive, probing questions concerning their views on specific legal and constitutional issues by members of this Committee in the confirmation process. Justice Anthony Kennedy was asked specifically for his views on capital punishment issues by Senator Byrd, Senator Heflin, and this Senator in his confirmation hearings. Do you consider such questioning inappropriate?

No. Your understanding of my answers is incorrect. I did not state that I found the questions, including those concerning my views on capital punishment, either objectionable or inappropriate. I affirmatively stated I believed the Executive and Legislative Branches had a right to ask those questions. I happen to believe capital punishment deters crimes and do not disapprove of it. I also stated I was not offended by those questions. I did state that, if I were a younger and less experienced lawyer, I might have been offended.

By way of explanation, I recognize that some lawyers believe capital punishment to constitute cruel and unusual punishment. Since they would expect, as district court judges, to swear to uphold and apply the laws of the United States, including the law enunciated by the Supreme Court, I am sensitive to the possibility they might be offended by questions carrying the implication that they might nevertheless invoke their personal views on this subject.

b. If not, do you consider it any less appropriate for the President, or his appointees in the Justice Department, to ask the same kind of questions? Please explain your answer, including a specific response to the question of why the President should not be able to inquire into the views of his judicial nominees on significant issues of law.

I expressly told the Committee that I did not find such questioning inappropriate.

c. Do you agree with the position of the U.S. Supreme Court, as established in numerous post-Furman precedents, that capital punishment is not prohibited by the Eighth Amendment to the Constitution or any other Constitutional provision? Or do you adhere to the contrary position of Justices Marshall and Brennan, that capital punishment is in all cases cruel and unusual punishment, prohibited by the Eighth Amendment?

I agree with the position of the Supreme Court.

I ATTEST TO THE ACCURACY
OF THESE ANSWERS

ROBERT P. PATTERSON, JR.

August 2, 1988

QUESTIONS FOR ROBERT P. PATTERSON, JR.
SUBMITTED BY SENATOR CHARLES E. GRASSLEY

1. During your appearance before the Committee on July 27, you suggested that representatives of the Justice Department improperly questioned you about specific issues that may come before the court. You further suggested that you were bothered, or even offended, by these questions.

Please explain your statements in detail. Specifically, what was asked? How did you respond? Why were you offended?

1. This question indicates that you have been misinformed. Indeed, I was asked if I was offended and answered I was not. I cannot quote the questions and answers verbatim, but the transcript will support my answer. What I did say was that I could understand how another person could have been offended.

2. In a response to the Committee questionnaire, you state that your partnership interest and severance agreement with Patterson, Belknap, Webb & Tyler is "to be negotiated."

(a) What is the status of these negotiations?

The status of my severance agreement with Patterson, Belknap, Webb & Tyler remains to be negotiated.

(b) When do you expect the issue to be resolved?

I expect to initiate negotiations if it becomes clear I will become a judge and to conclude negotiations before I take the oath of office.

(c) Will you make the information available to the Committee?

If the Committee requests the information, I will do so once an agreement is finalized.

3. As a member of the firm of Patterson, Belknap, Webb & Tyler, you are a partner of Harold R. Tyler, Jr., Chairman of the ABA Standing Committee on the Federal Judiciary.

(a) Were you interviewed by representatives of the ABA Standing Committee? Please provide the date and name[s] of any interviewer[s]. What was the substance of those interviews? How long in duration were the interviews?

I was interviewed by the Second Circuit representative of the ABA Standing Committee on the Judiciary. It was a broad-ranging examination of my background, my health, my experience as a lawyer and as a trial lawyer, my views on docket control and other related matters. I believe it took between 1-2 hours, although I did not time it.

(b) Did you discuss your evaluation by the ABA Standing Committee with Mr. Tyler? If so, what was the substance of that discussion?

I did not discuss my evaluation by the ABA Standing Committee with Mr. Tyler.

(c) What role, if any, did Mr. Tyler play in the ABA evaluation process for your nomination?

I was told by Mr. Tyler that he would recuse himself from the Committee's evaluation of my candidacy. I presume he took no part in the evaluation process.

(d) How long did the ABA evaluation process take?

About one month.

4. I find your response to the Committee questionnaire on the subject of judicial activism to be, frankly, quite troubling. Indeed, I find it to be decidedly impertinent, in that it mocks the question's premise by suggestion that judicial activism is an "unwarranted" creation "of the media."

(a) Do the terms "judicial activism" and "judicial restraint" have meaning to you, or are they mere labels based on perceptions? Please explain.

Judicial activism and judicial restraint have meaning to me but they are often used as labels based on perceptions.

(b) What do you believe is the proper role of a federal judge in our democratic society? Explain fully please.

The proper role of a Federal District Court Judge in our society is to dispense justice in a fair and evenhanded manner to those litigants who come before him or her. Findings of fact should be made after a careful weighing of the evidence presented to the judge. In applying the laws to the findings of fact, a judge should apply statutory law according to legislative intent and case law in accordance with precedent.

(c) Does the fact that Article III judges serve for life and are otherwise unaccountable to the democratic branches of government require that judges exercise judicial restraint? If not, why not?

Yes, among other reasons.

(d) If you are confirmed by the Senate and are faced as a judge with a conflict between your conscience and the "letter" of a duly enacted law, which would you favor? Please explain you analysis.

In my view, I have no choice but to follow the "letter" of a duly enacted law.

(e) How important is the Constitution's "case or controversy" requirement for Article III courts? Under what circumstances may federal courts relax this standard?

A "case or controversy" must exist for Article III courts to take jurisdiction of a litigant's complaint.

(f) In a volume titled "The Nature of the Judicial Process," Justice Cardozo wrote:

> **... the judge, even when he is free, is still not wholly free. He is not to innovate at pleasure. He is not a knight-errant, roaming at will in pursuit of his own ideal of beauty or of goodness. He is to draw his inspiration from consecrated principles. He is not to yield to spasmodic sentiment, to vague and unregulated benevolence. He is to exercise a discretion informed by tradition, methodized by analogy, disciplined by system, and subordinated to 'the primordial necessity of order in the social life.' Wide enough in all conscience is the field of discretion that remains.**

What do you think Justice Cardozo meant by these words? Do you agree?

I think Judge Cardozo meant a judge's power to exercise his or her own discretion is very limited.

(g) Thomas Jefferson once wrote: "Our peculiar security is the possession of a written Constitution. Let us not make it a blank paper by construction."

What do you think he meant by this? Do you think this statement, by a principal author of the Constitution, suggests that the Constitution should be strictly construed, or that an "interpretivist" approach to Constitutional analysis is most appropriate?

I think the statement by Thomas Jefferson suggests that the Constitution should be strictly construed.

(h) Compare Justice Brennan's interpretation of the Constitution. He has written that in some cases, a justice may perceive the community's "interpretation of the text to have departed so far from its essential meaning that he is bound by a larger constitutional duty to the community, to

expose the departure and point toward a different path." To determine the Constitution's "essential meaning," Justice Brennan would rely on what he believes is the "aspiration to social justice, brotherhood, and human dignity that brought this nation into being."

Which of these views -- Jefferson's or Brennan's -- comes closest to your understanding of how the Constitution should be interpreted?

I am not familiar with the context of the above remarks by Mr. Justice Brennan, but they evidently relate to the functions of a "justice," i.e., a Justice of the Supreme Court, not a District Court Judge. Mr. Justice Brennan's remarks would seem accurate when applied to the Supreme Court's analysis in Brown v. Board of Education or Gideon v. Wainwright. In my judgment, your quotations of Jefferson and Brennan are reconcilable, but it is my belief that a district court judge does not have the latitude Mr. Justice Brennan ascribes to a Justice of the Supreme Court.

(i) In response to the Committee questionnaire you stated:

> **I do recognize that in a limited number of cases ... judges have reluctantly found that a significant number of citizens of the United States are not being afforded their constitutional rights due to long-standing disregard of those rights by the institutions involved ... I fail to see what other course of action should be followed.**

Can you provide specific examples where you believe such court-imposed relief to have been appropriate?

Brown v. Board of Education and Gideon v. Wainwright are cases of the sort to which my answer referred. Your question relates to the scope of the relief imposed by the courts in connection with such decisions. The scope of such relief in such cases should be no broader than necessary to grant a deserving party the relief to which he or she is entitled as a matter of law.

In my view, examples of proper court-imposed relief occurred in Swann v. Board of Education, 402 U.S. (1971) and Flateau v. Anderson, 537 F. Supp. 257 (1982).

I ATTEST TO THE ACCURACY
OF THESE ANSWERS

ROBERT P. PATTERSON, JR.

JOSEPH R. BIDEN, JR., DELAWARE, CHAIRMAN

EDWARD M. KENNEDY, MASSACHUSETTS
ROBERT C. BYRD, WEST VIRGINIA
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PATRICK J. LEAHY, VERMONT
HOWELL HEFLIN, ALABAMA
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ALAN K. SIMPSON, WYOMING
CHARLES E. GRASSLEY, IOWA
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R.J. DUKE SHORT, MINORITY STAFF DIRECTOR

United States Senate
COMMITTEE ON THE JUDICIARY
WASHINGTON, DC 20510-6275

August 5, 1988

Honorable Patrick J. Leahy
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Pat:

As I indicated to you at our August 3, 1988 business meeting, I have continuing concerns about the Patterson nomination. Specifically, I find several of his answers to my written questions to be non-responsive.

I would appreciate it if you would put these follow-up questions to Mr. Patterson.

Sincerely,

Chuck

Charles E. Grassley
Ranking Minority Member
Subcommittee on Courts and
Administrative Practice

FOLLOW-UP QUESTIONS FOR ROBERT PATTERSON

1. My first written question asked you to state specifically the questions asked at your meetings with Justice Department representatives. Again, what was asked? How did you respond?

2. In your committee appearance, you stated:

> "Well, there were questions asked me in the Justice Department that had to do with philosophy -- what my judicial philosophy would be. I do not think that they are inappropriate necessarily." (emphasis added) Transcript, p. 25.

a. Under what circumstances would you believe such questions to be appropriate?

b. Would you disagree that asking a prospective judicial nominee for his or her views on judicial philosophy is a perfectly reasonable method of measuring judicial temperament?

c. You further stated:

> "I suppose that that is something that is within the prerogative of the legislative and executive branches." (emphasis added) Transcript p. 25.

Would you disagree that ascertaining the legal philosophy of a prospective judicial nominee who, once confirmed, will serve for life, is a principal way that this Committee can fulfill its advise and consent function?

3. In response to my earlier question 4(a) on judicial activism, you replied:

> "Judicial activism and judicial restraint have meaning to me but they are often used as labels based on perceptions."

a. I am left unclear as to whether you believe there is a difference, or whether you understand the difference, between these judicial approaches. Again, please explain what you think these terms mean.

b. Do you think these terms are important?

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August 8, 1988

FEDERAL EXPRESS

Honorable Patrick J. Leahy
Committee on the Judiciary
United States Senate
Dirksen Senate Office Bldge. - Rm. SD-224
Washington, D.C. 20510

Dear Senator Leahy:

I enclose my responses to the follow-up questions submitted for the record by Senator Grassley.

Yours sincerely,

Robert P. Patterson

Robert P. Patterson, Jr.

Enclosures

August 8, 1988

FOLLOW-UP QUESTIONS FOR ROBERT P. PATTERSON, JR. FROM SENATOR CHARLES E. GRASSLEY

1. My first written question asked you to state specifically the questions asked at your meetings with Justice Department representatives. Again, what was asked? How did you respond?

I can't remember specifically the questions asked at my meeting with the Justice Department on April 5, 1988. As I testified at the hearing, the questions were basically addressed to my judicial philosophy and related matters. For example, the discussion ranged over judicial restraint, the death penalty, rights of privacy, birth control and abortion. I remember also stating that I believed district court judges had limited powers and were bound by the decisions of the Supreme Court on these subjects. I was told there were "interstitial areas." I stated I would try to give my views if I was told what those interstitial areas were, but I do not recall any such questions being asked of me. I recall also discussion of the doctrine of separation of powers, and stating that I thought it might have been wise for the President to have announced when he signed the national budget that he considered the Boland Amendment an overstepping of Congress' powers and, therefore, not binding on the Executive Branch. I suggested that if this had been done, the Judicial Branch might have resolved this disagreement on the powers of

Congress in advance of the Iran-Contra affair. Some of my responses to questions were that I believed the death penalty was a necessary deterrent for certain types of criminals and agreed with the decisions of the Supreme Court on the subject, but that I was concerned by certain statistics evidencing that the death penalty was being imposed in a discriminatory fashion; that I agreed with the Supreme Court's decisions on abortion, but was concerned about the number of abortions in this country following the decision in Rowe v. Wade; that I was uncertain in my mind about the scope of the right of privacy held to exist in the Griswold case. With respect to your earlier question as to my being offended, please refer to my answer to Senator Humphrey's question 2(a), copy of which is attached.

2. In your committee appearance, you stated:

> **"Well, there were questions asked me in the Justice Department that had to do with philosophy -- what my judicial philosophy would be. I do not think that they are inappropriate necessarily." (emphasis added) Transcript, p. 25.**

a. Under what circumstances would you believe such questions to be appropriate?

I believe such questions to be appropriate (i.e., relevant) for a prospective nominee to the District Court to the extent they relate to the prospective duties of a District Court Judge and for a prospective nominee to the Supreme Court to the extent they relate to prospective duties of a Justice of the Supreme Court. It does not necessarily follow that such questions are inappropriate, however, when they go beyond those limits.

b. Would you disagree that asking a prospective judicial nominee for his or her views on judicial philosophy is a perfectly reasonable method of measuring judicial temperament?

I think I would disagree, although I suppose the purpose of such questioning could be to ascertain whether a prospective nominee to the District Court is so rigid in his or her views as to prevent him or her from fairly weighing evidence or interpreting the intent of Congress or the decisions of the Supreme Court. In my experience, the judicial temperament of a trial judge is generally unrelated to that judge's judicial philosophy and a nominee's judicial temperament can be better determined by interviews of opposing counsel, judges, and other persons with whom a nominee has had dealings.

c. You further stated:

> **"I suppose that is something that is within the prerogative of the legislative and executive branches." (emphasis added) Transcript p. 25.**

Would you disagree that ascertaining the legal philosophy of a prospective judicial nominee who, once confirmed, will serve for life, is a principal way that this Committee can fulfill its advise and consent function?

I would not disagree.

3. In response to my earlier question 4(a) on judicial activism, you replied:

> **"Judicial activism and judicial restraint have meaning to me but they are often used as labels based on perceptions."**

a. I am left unclear as to whether you believe there is a difference, or whether you understand the difference, between these judicial approaches. Again, please explain what you think these terms mean.

I believe the term "judicial restraint" is consistent with the separation of powers doctrine. In general, it involves due deference to legislative and executive decisions, unless a clear constitutional right is violated. "Judicial activism," a relative term, shows less regard for the decisions of the Legislative and Executive Branches of government. For a district court judge "judicial restraint" also embodies following legislative intent and judicial precedent regardless of his or her own legal philosophy and being fully aware of the practical limitations of the powers of the court and the desirability of effectuating a resolution of disputes by consent of the parties.

b. Do you think these terms are important?

I think that these terms are important, but authors having different legal philosophies have applied these terms based on their own perspectives in an incompatible manner.

I ATTEST TO THE ACCURACY
OF THESE ANSWERS

ROBERT P. PATTERSON, JR.

GORDON J. HUMPHREY
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United States Senate
WASHINGTON, DC 20510

COMMITTEES
ARMED SERVICES
JUDICIARY
LABOR AND HUMAN RESOURCES

August 11, 1988

Robert B. Patterson, Jr., Esq.
Patterson, Belknap, Webb & Tyler
30 Rockefeller Plaza
New York, NY 10112

Dear Mr. Patterson:

I have just received and reviewed a copy of your responses to follow-up written questions submitted to you by Senator Grassley, in connection with your nomination for the U.S. District Court.

In your response, you describe certain questions that were asked of you by Justice Department officials and your responses to those inquiries. You state that one of your responses was that "I agreed with the Supreme Court's decisions on abortion, but was concerned about the number of abortions in this country following the decision in Rowe v.Wade (sic)."

I request you amplify your statement. Specifically, I would ask, if Roe was a sound decision, why does it matter whether there are few or many abortions?

Sincerely,

Gordon Humphrey

Gordon J. Humphrey, USS

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August 18, 1988

Hon. Gordon J. Humphrey
United States Senate
531 Hart Senate Office Building
Washington, D.C. 20510

Dear Senator Humphrey:

In response to your letter I had not reread Roe v. Wade or other opinions of the Supreme Court of the United States on the subject of abortion at the time of my interview at the Justice Department. I did recall reading Roe v. Wade and accepting its ruling that a broad, statutory prohibition, as opposed to a limited prohibition, against abortion was in violation of the due process clause of the Fourteenth Amendment.

Since that time, I have been made aware by news articles of the hundreds of thousands of abortions being performed in this country. Many of those abortions appear to have been undertaken at a stage where the fetus is capable of living.

Under these circumstances, I am concerned that our population may become insensitive to the sanctity of human life. As those of us who lived through World War II are aware, insensitivity to the sanctity of human life can lead to acceptance of medical experimentation on individuals without their consent and even mass exterminations.

Yours sincerely,

Robert P. Patterson, Jr.

Senator **Simon**. Our next witness—we used to know him as Randy Rader, but I notice the schedule says Randall R. Rader.

TESTIMONY OF RANDALL R. RADER, BURKE, VA

Senator **Simon**. We are very happy to have you here in a slightly different position and you have your family with you here.

Mr. **Rader**. That is correct, Mr. Chairman.

Senator **Simon**. Any friends you wish to introduce?

Mr. **Rader**. I would like to. My wife, Sheryl; my oldest daughter, Lark, is sitting next to her; my oldest son is Samuel; Lisa is my second daughter; and then our youngest is Andrew.

Senator **Simon**. We are very happy to have all of you with us here.

Mr. **Rader**. We are quite proud of them, of course, as you might imagine, Mr. Chairman.

Senator **Simon**. You should be and I am sure they are very proud of you today here, too.

As I look over—we have to give you the same—you have heard these questions before.

Mr. **Rader**. Mr. Chairman, I must say that although well padded, I find this chair somewhat less comfortable than where I usually sit. [Laughter.]

Senator **Simon**. As I glance through the record, there is a lack of courtroom experience relative to most nominees we have before us.

Is that going to be a problem for you?

Mr. **Rader**. No, I do not believe so. As I have observed judicial nominees—and hundreds of them in my tenure here with the Senate—I have been impressed that they have a variety of qualifications. Fairness is required of them, objectivity, compassion, an understanding of the legislative process, and an understanding of the adjudicative process. I feel that my responsibilities in the Senate have supplied me a great deal of experience which will be of great worth to me and my colleagues on the bench.

Senator **Simon**. You are going to a court where there is a very specialized area.

Do you have background in this area and if not, how do you expect to bone up and get on top of it?

Mr. **Rader**. To some degree, working here in the Senate has provided me with an understanding of many of the issues which will come before the Court. One of the major areas of jurisdiction we have just given that Court, as you might recall, is the vaccine cases that will be sent there, as well as patent cases which are dealt with there extensively; Government contracts, and some other areas.

I am aware and mindful that I will need to concentrate and focus my efforts to completely fulfill my preparations for the Court, but I am satisfied that I will be able to do that.

Senator **Simon**. The only note of controversy I have found in your record is, apparently you were involved in obtaining funding for a book from the Justice Department's Office of Juvenile Justice.

Do you want to tell us what that was all about and what the situation is on that?

Mr. **Rader**. Yes. I was the consultant for a foundation. We did two separate books on different judicial topics. In each of those instances, we would enlist authors, many Senators, Attorneys General, Cabinet members, State officials, Governors—to write chapters and they would then receive honoraria in these two books that were privately funded.

A third book was conceived on the subject of juvenile justice and the same process was followed of deriving a list of Senators and other officials, including the head of the Administration's Juvenile Justice Office to write chapters.

That particular proposal was to be a grant proposal from the Office of Juvenile Justice and when questions were raised about the propriety of an honorarium being granted to one of the officers in the Juvenile Justice department, the same group that was reviewing the grant, we immediately withdrew that and did not pursue it further.

Senator SIMON. And what was the name of this foundation?

Mr. RADER. The Free Congress Research and Education Foundation.

Senator SIMON. Senator Thurmond.

Senator THURMOND. Thank you, Mr. Chairman. Mr. Rader, I want to congratulate you on your appointment by the President. I think he made a good selection. You have been here, I believe, since 1980 with Senator Hatch, have you not?

Mr. RADER. That is correct, Senator Thurmond.

Senator THURMOND. You have done a fine job here. I recall that I worked with you on several matters and found you to be very intelligent and very dedicated and I think you warrant this appointment to which you have been appointed. I just have a couple of questions here.

I consider judicial temperament to be a prerequisite for a Federal judge. Would you please give me your thoughts on this subject?

Mr. RADER. I think the crux of judicial temperament is fairness, compassion, objectivity. I would strive to bring honor upon this institution which, to some degree, I will represent there on the bench with the judicial temperament that I will demonstrate.

Senator THURMOND. And that means exercising control and not let excessive power go to your head?

Mr. RADER. Absolutely. I have had many excellent mentors in that particular regard.

Senator THURMOND. Mr. Rader, the interlocutory jurisdiction of the Court of Appeals for the Federal Circuit does not permit review of Claims Court decisions on liability before the quantum of damages has been determined in a case.

Do you believe this has adversely affected the productivity of the Claims Court?

Mr. RADER. I do not believe it has because, as I understand the authorities of a Claims Court judge, he can, at any time, certify a controlling issue in a case for appeal immediately to the Federal Circuit. Therefore, even if the damages in a case have not been fully assessed—and in some cases, they are ongoing in these complex patent cases—still, that ability to certify a case for immediate appeal would satisfy any difficulty in the area.

Senator THURMOND. I do not have any other questions. I hope that we can get you confirmed quickly and you can take office without delay. I am sure that my distinguished and able and dedicated friend here will help you.

Mr. RADER. Thank you very much.

Senator SIMON. Senator DeConcini.

Senator DECONCINI. Thank you, Mr. Chairman. Mr. Rader, you have served, I think, exceptionally well here in the Judiciary Committee and I have had the experience, as my staff has, to work with you closely on the floor and in committee. My only regret is that you will not be here to work on the legislation and many things that you have been involved in.

I think that your temperament has been demonstrated many, many times here. I have seen where you are tough and firm and I have also seen where you can give and take and compromise without giving away your principles or the Senator that you are representing there. I think it holds you in very good stead to be able to be nominated to this special court because you have a talent that I have witnessed first hand.

I think that you can become one of the outstanding judges on the Claims Court. That is a very technical court. You have worked with those laws that we have passed here. You have worked with the judges. I think it is an excellent appointment and commend you for the fine family you have, for the commitment to that family, for the commitment to Senator Hatch, your employer, and to this Senator here, having worked with you, and to the Judiciary committee.

I cannot think of a better nominee for this particular position today, Mr. Chairman, than Mr. Rader and I am pleased that he has been chosen and I hope we can confirm him very quickly.

Mr. RADER. May I say, Chairman DeConcini, that it has been a high honor to work with you on the Patent Subcommittee as well, and with your staff.

Senator SIMON. Now you have heard the pleasant side; now one of your critics here on the committee, Senator Hatch.

Mr. RADER. I wonder if somebody could help me with this next line of questioning. [Laughter.]

Senator HATCH. I think you are in trouble, young man. [Laughter.]

Let me just say this. I am really pleased with this nomination, as you can imagine, because I do not know of anybody who has ever served with me in whom I have placed more confidence and actually more basic respect. Randy is not only a very fine lawyer, but he is a wonderful intellect and a very fine mind as well.

I have known him for a long time and I can state, without reservation, that he is highly qualified for this or any other position. It is an interesting thing to have members of this committee—it is one of those few occasions where the committee receives a nomination for a person whose character, judicial temperament, intellectual ability, and integrity are really known by every member of the committee.

I think without question, every member of this committee has to say that Randy Rader has been a terrific staff member of the Judiciary committee. I have had some Senators say to me that they are going to support you because they cannot wait to get you out of here because of your effectiveness with regard to this committee and they are sure that I will be very ineffective without you and I am, too. [Laughter.]

So, I just want you to know that I think your intellectual ability and skills have done a lot for the Congress of the United States, a lot for our country, a lot for the judicial system in this country, and a lot for the rest of the jurisdiction that we have with regard to this particular committee.

I just think you have been fair in your dealings with everybody on the committee and you have exhibited a strong commitment to public service. I think that is one of the greatest things about you. I know that you can go out and do much better financially outside of public service, but you enjoy public service and you do well in it.

I also want to point out to everybody that Randy really is a legal scholar. He is widely published. He has helped many of us to understand some of these intricate and difficult concepts of law, especially in the patents, trademarks, and copyrights area and I think he has been unflinching in his desire to help the majority and minority staff members and he has worked hard with all of them and I personally have appreciated that.

I think that Mr. Rader will serve on the Claims Court with great distinction and all I can say is, it is a great honor to sit here and know that somebody with whom you have worked has been given this type of an honor. All I can say is, we are going to very, very badly miss you. I just wish you the best.

I also want to point out what a wonderful family he has. His wife Sheryl is just a terrific human being and Lark and Samuel and Lisa and Andrew there. Andrew has lived up to everything he said he would do before these hearings. I told him he really had to behave himself and he has really done a good job, is all I can say, which is, as I understand, a little bit unlike Andrew. I have heard about him in church. [Laughter.]

In any event, Randy, we are really proud of you. We look forward to watching your career and we know that you are going to, wherever you serve, give the best you can in an impartial, decent, honest way and to me, that is really important. So, I am proud to be able to support you and, of course, I think, every member of this committee I hope will support you.

Senator THURMOND. Senator Hatch, you might add that he has had a good teacher, too, has he not?

Senator HATCH. Yes, Senator Thurmond, you are a good teacher. [Laughter.]

Senator THURMOND. I was speaking about you.

Senator HATCH. Well, you have been teaching both of us for a long time. I might add that Senator Simon and Senator DeConcini, they have both taught us a lot, too.

Mr. RADER. Mr. Chairman, I am sure that you realize that I have no way to find the words to express the esteem and respect that I feel for the Senator who has just spoken.

Senator SIMON. We thank you very, very much and we wish you the very best, you and your family. Thank you.

Mr. RADER. Thank you very much.

[The following material was submitted for the record:]

JOSEPH R. BIDEN, JR., DELAWARE, CHAIRMAN
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HOWARD M. METZENBAUM, OHIO
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DIANA HUFFMAN, STAFF DIRECTOR
TERRY L. WOOTEN, MINORITY CHIEF COUNSEL
R.J. DUKE SHORT, MINORITY STAFF DIRECTOR

United States Senate
COMMITTEE ON THE JUDICIARY
WASHINGTON, DC 20510-6275

July 29, 1988

Randall R. Rader, Esq.
Minority Chief Counsel
Subcommittee on Patents, Copyrights and Trademarks
Senate Judiciary Committee
Washington, DC 20510

Dear Randy:

In order to supplement the Judiciary Committee's record on your nomination to be United States Claims Court Judge, please provide written answers to the enclosed additional questions submitted on behalf of the Committee.

Your answers should be accompanied by your attestation of their accuracy. Please deliver your answers to the Committee in Room SD-224, Dirksen Senate Office Building, Washington, DC 20510. Any questions concerning this request should be directed to Andrew Rainer, Investigative Counsel to the Committee, at 224-8191.

Thank you for your continued cooperation with the Committee in its consideration of your nomination.

Sincerely,

Paul Simon
PAUL SIMON
United States Senator

ADDITIONAL QUESTIONS FOR RANDALL R. RADER

1. Lawsuits in the Claims Court cover a variety of subject matters, but virtually all have one thing in common: the defendant is the United States, and all judgments rendered against that defendant are paid from the federal treasury.

a) You have spent your entire career in the federal government. If you are confirmed as a Claims Court Judge, do you feel you would be sufficiently attuned to the concerns of claimants against the federal government?

b) If you are confirmed as a Claims Court Judge, would you assume some obligation to protect the federal purse, or would you hold the United States liable to the same extent as a private party, in those cases in which the United States has consented to be sued in the Claims Court?

2. At the hearing on July 27, you briefly described your involvement in a 1983 proposal to obtain funding for a book from the Justice Department's Office of Juvenile Justice and Delinquency Prevention (OJJDP). You indicated that this book project followed on the heels of two privately-funded book projects you had worked on previously.

a) According to an article that appeared in the Washington Post on April 26, 1983 (a copy of which is attached), you were one of the authors of the grant proposal to the OJJDP. Is that report accurate?

b) At the time the grant proposal was submitted, you were serving on the staff of the Subcommittee on the Constitution of the Judiciary Committee. Did you consider the propriety of your seeking funds from the Justice Department while you were also working for the Committee that oversees the Justice Department?

c) Did the grant proposal, or any agreement you may have had with the other submitters of the proposal, provide for the payment of any honorarium or other compensation to you personally for your work on the project?

d) Under Senate Rule 37(3), no employee of the Senate "shall engage in any outside business or professional activity or employment for compensation unless he has reported in writing . . . the nature of such activity or employment to his supervisor." You have indicated to the Committee staff that you worked on the two book projects that preceded the OJJDP grant proposal after having filed a form with your supervisor disclosing the work that you were doing. Did you file such a form in connection with the third book project? If so, to whom did you submit that form? Also, did you disclose in that form that you would be requesting funding from the OJJDP?

e) According to the Washington Post article, the grant proposal that was submitted to the OJJDP contemplated paying a $1,000 honorarium to the Acting Director of the OJJDP. The article quotes you as saying it was a mistake to include the Acting Director as a recipient of funds. Were you aware of that provision at the time the proposal was submitted?

f) When and why was the grant proposal withdrawn? Why was it withdrawn on the particular day it was withdrawn?

Reagan Asks Quick Action On Regnery

Probe Held Up Vote On Justice Nominee

By Mary Thornton
Washington Post Staff Writer

The White House announced yesterday that, despite growing criticism, it will ask the Senate to act quickly to confirm Alfred S. Regnery, President Reagan's controversial choice to head the Justice Department's Office of Juvenile Justice and Delinquency Prevention.

The nomination had been on hold for nearly two weeks while the FBI investigated charges by a Madison pediatrician that Regnery poses "a danger to the health needs of our children."

Citing medical ethics, Dr. William Ylitalo refused to comment on his charge except to say that he based his opinion on Regnery's behavior during the 1975 birth of one of his children in Madison, where Regnery then lived. However, Ylitalo talked extensively with the FBI after Regnery waived his right to medical privacy.

"We see no reason, based on the allegations of the doctor, that we should hold up the nomination," said White House counsel Fred F. Fielding after reading the FBI report. He said it has been given to the Senate Judiciary Committee with a recommendation that the panel approve the nomination of Regnery, now serving as the department's acting director. The Senate committee is to consider the nomination today.

Regnery, a former official of Young Americans for Freedom and former aide to Sen. Paul Laxalt (R-Nev.), has been a subject of controversy because of his stated plans to shift the emphasis in the office away from delinquency prevention and toward tougher punishment for juveniles who commit serious crimes.

Meanwhile, The Washington Post has learned that Justice Department officials have blocked a $98,300 grant that was under consideration by Regnery's office after learning that Regnery was to have been paid to write part of the study.

Employes in the office say that Regnery gave his initial approval of the contract for Randall R. Rader, a top aide to Sen. Orrin G. Hatch (R-Utah), to produce a book on the juvenile justice system. According to the contract proposal Regnery was to have been paid $1,000 for writing one chapter.

The proposal, a copy of which was obtained by The Post, indicated that the book was to include several chapters of another Rader book recently published by a firm headed by Regnery's father. Henry Regnery is president of Regnery/Gateway Inc., which published "Criminal Justice Reform," released two weeks ago. Rader was co-editor of that book, which was prepared for the conservative Free Congress Research and Education Foundation.

Regnery, who was attending a meeting in Detroit, did not return telephone calls yesterday. But a department spokesman said that Regnery never approved the grant application formally, and merely forwarded it to the comptroller's office for further review.

But sources in the juvenile justice office said grant applications are not sent on to the comptroller without Regnery's approval. They said that employes in the comptroller's office immediately raised objections about a possible conflict of interest and that Regnery was told that Rader should withdraw the application. It was withdrawn last week.

Rader conceded yesterday that it was a mistake to include Regnery as a recipient of the funds.

"That was my problem. I perhaps should have known better," Rader said. He added that he withdrew the application on his own, however, without any request from Regnery's office.

Washington Post
4/26/83

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R.J. DUKE SHORT, MINORITY STAFF DIRECTOR

United States Senate
COMMITTEE ON THE JUDICIARY
WASHINGTON, DC 20510-6275

August 1, 1988

The Honorable Paul Simon
United States Senate
SD 224
Washington D.C. 20510

Dear Senator Simon:

Thank you for the courtesy and genuine kindness you extended to me and my family during my nomination hearing last week. This was a memorable event for our family.

Enclosed with this letter are the answers to the written questions you posed after the hearing. My answers are, to the best of my knowledge and recollection, a full and accurate response to your inquiries.

Thank you again.

With warm personal regards,

Randall R Rader

Randall R. Rader
Chief Counsel, Minority
Subcommittee on Patents

RRR:jl

Response to Additional Questions for Randall R. Rader

1. Lawsuits in the Claims Court cover a variety of subject matters, but virtually all have one thing in commons: the defendant is the United States, and all judgments rendered against that defendant are paid from the federal treasury.

a) You have spent your entire career in the federal government. If you are confirmed as a Claims Court Judge, do you feel you would be sufficiently attuned to the concerns of claimants against the federal government?

Yes. My work in the legislative branch has provided me a broad perspective of the types of claims likely to come before the Claims Court.

b) If you are confirmed as a Claims Court Judge, would you assume some obligation to protect the federal purse, or would you hold the United States liable to the same extent as a private party, in those cases in which the United States has consented to be sued in the Claims Court?

I would assess liability as the facts and law dictate in each case.

2. At the hearing on July 27, you briefly described your involvement in a 1983 proposal to obtain funding for a book from the Justice Department's Office of Juvenile Justice and Delinquency Prevention (OJJDP). You indicated that this book project followed on the heels of two privately-funded book projects you had worked on previously.

a) According to an article that appeared in the Washington Post on April 26, 1983 (a copy of which is attached), you were one of the authors of the grant proposal to the OJJDP. Is that report accurate?

I signed the grant proposal. I did not author it.

b) At the time the grant proposal was submitted, you were serving on the staff of the Subcommittee on the Constitution of the Judiciary Committee. Did you consider the propriety of your seeking funds from the Justice Department while you were also working for the Committee that oversees the Justice Department?

At the time of the proposal, my responsibilities were limited. I had no responsibilities relative to the office of juvenile justice.

c) Did the grant proposal, or any agreement you may have had with the other submitters of the proposal, provide for the payment of any honorarium or other compensation to you personally for your work on the project?

To my knowledge, the grant proposal contained no compensation for myself. Under an informal agreement existing long before the proposal in question, I received $1,500 a year, if I remember the amount correctly, for consulting with the Free Congress Research and Education Foundation. The proposal to OJJDP was not contemplated at the time I entered into the consulting agreement with the Foundation.

d) Under Senate Rule 37(3), no employee of the Senate "shall engage in any outside business or professional activity or employment for compensation unless he has reported in writing . . . the nature of such activity or employment to his supervisor." You have indicated to the Committee staff that you worked on the two book projects that preceded the OJJDP grant proposal after having filed a form with your supervisor disclosing the work that you were doing. Did you file such a form in connection with the third book project? If so, to whom did you submit that form? Also, did you disclose in that form that you would be requesting funding from the OJJDP?

Shortly after joining the Senate Judiciary Committee staff, I filed with Senator Hatch an ethics committee form disclosing in full the particulars of my consulting with the Foundation. This disclosure form was given to Mr. Thomas Parry, Senator Hatch's administrative assistant at the time.

e) According to the Washington Post article, the grant proposal that was submitted to the OJJDP contemplated paying a $1,000 honorarium to the Acting Director of the OJJDP. The article quotes you as saying it was a mistake to include the Acting Director as a recipient of funds. Were you aware of that provision at the time the proposal was submitted?

I was aware that the acting director of OJJDP was listed, along with several Senators, cabinet officers, state officials, law professors, judges, social workers, and others, as prospective authors. None of these proposed authors had been approached. I was also aware that the proposal included, as with our earlier projects, an honorarium for those authors who chose to accept the offer. (On previous projects, many had not accepted the offer of an honorarium.) I had not linked those two facts in my mind relative to the acting head of the office of juvenile justice. What I recall saying to the WASHINGTON POST reporter was that I should have paid closer attention to the details and process of the proposal.

f) When and why was the grant proposal withdrawn? Why was it withdrawn on the particular day it was withdrawn?

I do not know. I did not personally withdraw the proposal. Without consulting with me, the Foundation withdrew the proposal. I learned later that the withdrawal was prompted by the questions raised at the time of the confirmation of Mr. Regnery.

Patrick Leahy

STATEMENT OF SENATOR PATRICK LEAHY
ON THE NOMINATION OF RANDALL RADER TO BE A JUDGE
OF THE UNITED STATES CLAIMS COURT

I want to join my colleagues in congratulating you on your nomination to the United States Claims Court. I will also join them in voting to confirm your nomination to that Court. I do, however, want to offer two qualifications to my support.

First of all, your responses to the Committee's questionnaire indicate that you have never appeared as a lawyer in court. Litigation experience is an exceptionally important qualification for any federal judicial position. I opposed the nomination of Bernard Siegan, for example, principally because he had never participated in litigation before the federal courts. However, experience in the legislative process is also valuable, particularly for a nominee to the Claims Court, which is frequently called upon to interpret complex statutes passed by Congress. Your considerable contributions to the legislative work of this Committee over the past several years will, I am sure, serve you well at the Claims Court. Also, the position to which you've been nominated carries a 15-year term, unlike the lifetime position to which Professor Siegan was nominated, so that if you and the trial process don't get along, both you and the Senate will have a chance to reevaluate your tenure.

Second, you have written and spoken extensively on a number of important constitutional and legal policy issues, such as school busing, court-stripping, habeas corpus law, pretrial detention, and exclusionary rule reform. I would consider it important to delve into your writings had you been nominated to a court that regularly confronts those issues. However, few if any of these issues come within the jurisdiction of the Claims Court, and I therefore will not raise them now.

Rather, I will again offer you my best wishes for success in the nominations process and, if you are confirmed by the Senate, as a judge of the United States Claims Court.

Alliance for Justice

A National Association of Organizations Working for Equal Justice

600 New Jersey Avenue, N.W. ■ Washington, D.C. 20001 ■ 202/662-9548

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FRANCES DUBROWSKI
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Women's Legal Defense Fund

August 3, 1988

The Honorable Joseph R. Biden, Jr.
United States Senate
Washington, D.C. 20510

Dear Senator Biden:

As representatives from civil rights and public interest groups, we wish to express to the Senate Judiciary Committee our serious reservations about the nomination of Randall Rader to the United States Claims Court. We believe that Mr. Rader's lack of experience makes him a questionable choice for a federal judge and that his narrow views on the Constitution and the role of the courts should be thoroughly investigated by the Senate Judiciary Committee.

First, Mr. Rader lacks even the minimum courtroom experience expected of judicial nominees to federal trial courts. The Claims Court, a trial court with jurisdiction concurrent with that of district courts, hears cases where the United States is a defendant, whether the case arises under either the Constitution or federal laws or involves a contract. Since graduating from law school only ten years ago, Mr. Rader has confined his professional legal experience solely to staff positions in Congress. He has never litigated a case, nor appeared in a courtroom or before an administrative agency. He has no practical experience with court procedures and rules, and litigants before him would be disadvantaged by this lack of experience.

Second, as for his views on the Constitution and the role of the courts, Mr. Rader's writings and public speeches consistently reflect a legal philosophy that is outside the mainstream of established law. Manifesting a strong bias for government and against individual rights, these writings and speeches raise very real questions of whether Mr. Rader could actually dispense evenhanded justice to litigants who are suing the federal government. His writings display an animosity to established Supreme Court precedent concerning religious freedoms, criminal procedure, and civil rights.

For example, in a 1985 Lincoln Review article entitled "Church, State, and Public Policy", Mr. Rader suggests that the Supreme Court has incorrectly interpreted the First Amendment's Establishment of Religion clause. According to Mr. Rader, "[t]he First Amendment simply was not drafted to bar governmental encouragement or support for religion in general." In fact, Mr. Rader advocates "traditional religious exercises in public settings," including "a moment of silent reflection" in public schools, which the Supreme Court held unconstitutional in Wallace v. Jaffree, 472 U.S. 38 (1985).

In the area of criminal procedure, Mr. Rader advocates a cost-benefit approach, which would seriously undermine the Constitutionally guaranteed rights of criminal defendants. In a South Texas Law Journal article entitled "Legislating a Remedy for the Fourth Amendment", he denounces the exclusionary rule as a way to deter law enforcement abuses of the constitutional prohibition against unreasonable searches and seizures. Mr. Rader maintains that the rule is not constitutionally mandated, despite decades of Supreme Court cases reaffirming the rule. Thus, he advocates abolishing the rule by simple legislation, bypassing the clear procedures for amending the Constitution.

Regarding the jurisdiction of federal courts, Mr. Rader in a 1982 address to a judicial conference advocated stripping federal district courts of their well-settled power to hear certain federal cases. Mr. Rader praised one Senate bill that would have denied the Supreme Court as well as the lower federal courts the authority to order certain civil rights remedies. He also urged adoption of a Human Life bill that would have removed the lower federal courts' authority to hear challenges to the anti-abortion bill.

Also, in a 1985 Cumberland Law Review article on Section 1983 actions, Mr. Rader shows an insensitivity to the wrongs addressed by Section 1983 actions. He attributes the rise in Section 1983 suits to "the prospect of lucrative damage awards from a deep governmental pocket and easy access to federal jurisdiction, not to mention generous attorney's fees awarded to prevailing plaintiffs". Mr. Rader's views suggest that he believes that the typical Section 1983 litigant is merely attempting to pick the government's pocket. Consequently, he advocates limiting the scope of the civil rights action, which could prevent many individuals from protecting and vindicating their rights.

Litigants before the United States Claims Court have a right to expect a judge with relevant legal experience who will uphold the law and who will demonstrate a commitment to equal justice. Mr. Rader's background and record raise serious questions about whether he meets this basic standard. We urge the Committee to consider these questions and to thoroughly investigate this nominee.

Respectfully submitted,

Nan Aron

Nan Aron
ALLIANCE FOR JUSTICE

On Behalf of the Following Individuals and Organizations:

Melanne Verveer, PEOPLE FOR THE AMERICAN WAY

Estelle Rogers, FEDERATION OF WOMEN LAWYERS

William Taylor, Esq.

Loomis Mayfield, AMERICANS FOR DEMOCRATIC ACTION

Nancy Broff, NATIONAL ABORTION RIGHTS ACTION LEAGUE

Senator **Simon**. Next we have a panel, Patricia Ann Reaux, Louise Black, Charles Bean, and David Jones. Oh, Mr. Jones is not here. Could I ask Howard Hoover, Larry Veselka, and John Hill also to come forward or just stand where you are and raise your right hands? And would the first three that I called please do the same?

Do you swear to tell the truth, the whole truth, and nothing but the truth, so help you God?

Ms. **Reaux**. I do.

Ms. **Black**. I do.

Mr. **Bean**. I do.

Mr. **Hoover**. I do.

Mr. **Veselka**. I do.

Mr. **Hill**. I do.

A PANEL, CONSISTING OF PATRICIA ANN REAUX, HOUSTON, TX; LOUISE BLACK, HOUSTON, TX; AND CHARLES BEAN, HOUSTON, TX

Senator **Simon**. I would ask that you confine your remarks to 5 minutes so we can have time for questioning of these witnesses and the next witnesses also. Ms. Reaux, am I pronouncing it correctly?

Ms. **Reaux**. That is correct.

Senator **Simon**. All right. Ms. Reaux, we are happy to have you here.

Ms. **Reaux**. Good afternoon. My name is Patricia Reaux and I am the secretary for the Northeast Community Action Group and also one of the named plaintiffs in the case——

Senator **Simon**. Can you pull that microphone just a little closer to you there?

Ms. **Reaux**. Sure. In the case of *Bean* v. *Southwestern Waste Management* and I would like to thank you, Senator Simon, and also the Senate Judiciary Committee for our invitation to come and make a statement about the appointment of Mr. Sim Lake as a Federal judge to the Southern District of Texas.

I strongly oppose this appointment for several reasons. Mr. Lake, as attorney of record in the case, *Bean* v. *Southwestern Waste Management,* I feel a grave injustice was done to me, my family, my neighborhood, and the northeast black community when a landfill/dump was placed in the heart of our community, leaving us victims to health risks, property devaluation, and a plight of our community role models.

Secondly, I feel an even greater injustice was done to us when we tried to execute our constitutional right and fight Southwestern Waste Management. Mr. Lake and his client used underhanded, divisive, and unethical tactics in an effort to destroy our effort. They did so by planting spies in our camp. Dr. Charles Moore, Ed Shannon, Councilman Ernest McGowan—just to name a few.

I know this was wrong. Dr. Moore befriended us and one of the examples of this is that he came to us as a friend, via one of our judge friends, Judge Al Green in the City of Houston, and also a member of the clergy. One of the things that really stick in my mind is Dr. Moore, when he came, he said that his expertise were involved in fights and struggles such as what we had.

So, he attended meetings and one of the things that really stuck in my mind was that on one occasion, we wanted to have a protest and Dr. Moore was present at our group meeting and he suggested that we alter that plan. And he was real strong on that, but our mind set was that, we were out there and the dump must go. So, we did not adhere to his decision, while in the struggle, he took money from the group. He said that he would produce tickets.

Now, to this day, the tickets were never produced and Dr. Moore never returned the group's money, so I feel that that was unfair for him to do that. Ed Shannon was in both camps and at the time, we did not know that Dr. Moore was on the payroll of BFI.

The greatest of the three was Councilman McGowan. At no time was McGowan ordered by the mayor to monitor our lawsuit. I have a memorandum from the mayor where Mr. McGowan was ordered to be a part of a committee to check to see if the permitting of the landfill was in order. Per Council, only one meeting took place. Therefore, I feel Mr. Lake is mistaken when he states that he was acting in good faith when he gave a settlement proposal to Mr. McGowan.

I contend that this was the last phase of a well-thought out plan to not only destroy our group's struggle, but to disgrace and discredit our attorney, Ms. Linda McKeever Bullard as well, as most of our group did not know of the settlement proposal. However, our President, Charles Stredit, did know about the proposal, but we had not been informed that he knew.

Mr. McGowan knew our position. We had met with him on at least three occasions that I know of stating our position was the dump must go. We also had charged that he had not acted in the best interest of the people he represented in his district when he accepted a $17,000 campaign contribution from BFI. Therefore, there is no way that Mr. McGowan could have ever went to Mr. Lake in good faith to ask for a settlement proposal.

I charge Mr. Lake with willfully turning the proposal over to Mr. McGowan. To my knowledge, Mr. Lake never responded to our counsel, Ms. Bullard. It is my understanding that even to this day, Attorney Bullard has not gotten a response from Mr. Lake and that it was Mr. Tom Arbury and Mr. Lake who initiated the request for the settlement proposal from our attorney with the intent to use it just as it was used.

The last and foremost reason why I feel this nomination should be denied is because Mr. Lake's previous record of conduct in permitting unethical deeds to be done under the cover of justice is asinine. I feel God knows as well as we the class in the suit are crying out for righteousness and justice to be important to us by denying this appointment of Mr. Lake to a Federal judgeship.

I contend that Mr. Lake is not fit to sit as a judge in these United States of America at this time or no other time. He has proven that his power would not best serve all mankind with justice and equality. May God guide you in your decision. Thank you.

Senator SIMON. We thank you very much. Louise Black.

TESTIMONY OF LOUISE BLACK, HOUSTON, TX

Ms. **Black**. First of all, I would like to thank you for the invitation——

Senator **Simon**. Can you pull that microphone a little closer to you, too?

Ms. **Black**. Sure. My name is Louise Black and I was the treasurer for the plaintiff—and also a plaintiff in the *Margaret Bean* v. *Southwestern Waste Management.* I would like to thank you for inviting us over to testify in the nomination of Mr. Sim Lake.

I feel that Mr. Sim Lake should not be granted the nomination as a Federal judge for various reasons. No. 1, I sincerely believe that blacks and other minority groups will not get justice in Mr. Lake's court if he is appointed. I feel also that blacks intimidate Mr. Lake. Why do I say that I feel that blacks intimidate Mr. Lake?

Because when we were in court, we had to ride the elevator with Mr. Lake. Mr. Lake complained that we harassed him. He complained to the judge that we harassed him. We did not harass him. We only got on the elevator; it was crowded; and I think that caused a problem with him.

Mr. Lake's clients, I do believe, employed such people as Ed Shannon, Charles Moore, Emma Horn, and many other blacks to come into our group, the Northeast Community Action Group, and try to discourage and——

Senator **Simon**. If I may interrupt you just for a moment, Ms. Black, Senator Thurmond has to leave and just wants to say something.

Senator **Thurmond**. Thank you, Mr. Chairman, appreciate that.

Mr. Chairman, I just want to say that we have studied the resumes and backgrounds and investigations have been made on all these nominees and we feel like they are qualified and I would be glad to support all of them. I have got to leave to go to another meeting, but I just wanted you to know that I will support them when the time comes up. Thank you, Mr. Chairman.

Senator **Simon**. Thank you. And Ms. Black, we have interrupted you and I note we have a roll call.

Senator **Thurmond**. Mr. Chairman, I have a few questions. Do you mind preparing the notes?

Senator **Simon**. We will see that these questions are, at least, submitted in writing, if not personally.

In the meantime, we have a roll call and we will have to take a 10 minute recess and be right back.

[Recess.]

Senator **Simon**. The hearing will be resumed.

Before I resume with Ms. Black—Attorney David Jones of Houston was to be a member of this panel. He had an engagement in court today which could not be changed. We will include his statement in the record.

[Aforementioned material follows:]

DAVID A. JONES
ATTORNEY AT LAW
LYRIC OFFICE CENTRE
440 LOUISIANA, SUITE 1875
HOUSTON, TEXAS 77002
TELEPHONE (713) 227-6377

June 1, 1988

The Honorable Patrick Leahy
United States Senate
Washington, D.C. 20510

Dear Senator Leahy:

After careful consideration, the undersigned oppose the nomination of Simeon T. Lake as federal judge and request the Senate Committee to grant additional time in the review process for us to present our views. In the interest of expediting our opposition, we present the following:

1. Simeon Lake is not the best qualified candidate from this district. He has worked for one law firm for 16 years and his legal career has been principally involved in the representation of extremely narrow commercial interests. He has virtually no background in criminal law and thus is ill-suited for a judicial office that has a substantial criminal docket. In addition, Mr. Lake has no experience as a judge therefore his judicial temperament cannot be properly assessed.

2. Every lawyer owes his profession and community a certain amount of legal work for the disadvantaged or those without means. Mr. Lake's obvious legal skills together with the strengths of the law firm he represents could have easily satisfied this facet of a lawyer's professional life. Yet, Mr. Lake's contributions in this area, and those of his firm, have been virtually nonexistent. There are dozens of lawyers in our community who have contributed significant amounts of time and resources in pro bono work and it is that standard by which Mr. Lake falls short.

3. Mr. Lake is either apathetic or unaware of the needs of minority citizens in his community and it is apparent that his recent sensitivity to discriminating social arrangements at the Houston country club where he is a member is of the confirmation conversion variety. Additionally, Mr. Lake's continuous involvement with a client (Browning-Ferris Industries) who has consistently used money and influence to gain economic and political advantage over minority (black)

neighborhoods. This reveals a bias for unchecked corporate power over the powerless such that no individual or minority group should feel comfortable with his exercise of judicial powers. We believe that any lawyer, especially one without judicial experience, must have demonstrated some degree of interest in minority affairs and civil rights, to have the necessary total community support before taking a federal bench.

4. We believe that serious and probing questions should be directed at Mr. Lake for his unquestioning association with former State Senator Jack Ogg. As Mr. Ogg was known to many in our community by his reputation of profiting from his powerful office, we question Mr. Lake's actions as the revelations of Mr. Ogg's involvement with BFI became known. Certainly, Mr. Lake should have known well before the trial of the civil rights action against BFI in July, 1984, that his client, BFI, and his co-counsel, Mr. Ogg, were alleged to have used Mr. Ogg's high office to influence agency decisions and to "develop community support" for their business interests. It would appear that Mr. Lake should have been more than suspicious of Mr. Ogg and his client's practices as similar allegations surfaced in the hearing on temporary relief in the BFI civil rights case in November, 1981. One can only conclude that Mr. Lake accepted this sad state of public affairs in our community and hid behind the protection offerred by attorney-client relationships. That is little comfort to a disadvantaged community trying to educate its children with depressed property values and an unwanted landfill.

We hope the Senate Committee will review these matters carefully as the issues raised by this nomination are fundamental to our system of justice and the integrity of the people who administer it.

Very truly yours,

David A. [illegible]
President, Houston Democratic Forum
[illegible] R Reyna
Exec. Pres. UFCW 408
Wilmer Oliver - AFSCME. 1550
H.C. Ware — LU #116 Roofers

[illegible] 5th
Harris County AFL-CIO
Francis M. [illegible], Community Commission City Houston Board

cc: Senator Lloyd Bentsen
Representative Mickey Leland

Senator **Simon**. Ms. Black, my apologies for interrupting you twice here. If you can, continue.

Ms. **Black**. I think I will back up to my second point. My second point was, Mr. Lake's clients, I do believe, employed such people as Ed Shannon, Charles Moore, Emma Horn, and many other blacks to come into our group, which was the Northeast Community Action Group and try to discourage and divide the group. They said that this would cause the group to drop the lawsuit which was mentioned earlier, *Margaret Bean* v. *Southwestern Waste Management*. I feel it was very unethical in the manner in which his client interfered.

Mr. Lake caused dissension between the Northeast Community Action Group and he caused that dissension by disclosing a proposed settlement of a Federal court lawsuit concerning the Whispering Pines landfill, which Councilman Ernest McGowan, who discussed it on a talk show program before the attorney could discuss it with her clients.

Mr. Lake knew that the attorney had not made us aware of that settlement proposal because she told him so. I feel that Mr. Lake would be a judge for the rich and famous and not the poor and minorities because he worked very hard in placing a dump in a black community and succeeded.

I hardly think it is proper or ethical for a man to be appointed a Federal judge when he thrives on making the lives of the poor and the minorities unbearable. We, the Northeast Community, feel Mr. Lake, his clients, Ed Shannon, Charles Moore, Ernest McGowan, and other so-called community leaders conspired to divide the Northeast Community Action Group and to discredit our attorney.

For example, BFI hired a firm called Image Transition and some of the names that I mentioned earlier such as Mr. Moore, Charles Moore—he came into our group claiming to be our friend and when he came in, he told us that he was there to help us and we opened our doors to our homes and to our group and invited him in. Mr. Moore, he worked with us, claiming to help us do anything that we needed him to do. Later, we found out that Mr. Moore was not working in the best interests of the group.

Mr. Moore also asked us to meet with Browning-Ferris attorneys and the vice president of Browning-Ferris. We refused to meet with Browning-Ferris, according to what Mr. Moore wanted us to do. After we told Mr. Moore that we would not do that, Mr. Moore, he took money from us, claiming to help us solicit other funds.

He was going to help us to get tickets for various fundraisers that we were going to do. We later found out that Mr. Moore was on Browning-Ferris' payroll and I feel that Mr. Lake had to have known about that.

In closing, I would like to say that after all the things Mr. Lake has done to us as a race and a community, I feel that he is unfit to sit on the bench as a Federal judge, where human lives are at stake. If Mr. Lake is nominated—if Mr. Lake's nomination is turned down, it will send a message to other attorneys that unethical tactics does not pay. Thank you.

Senator **Simon**. We thank you very much. Aside from the case that you have discussed and just so I can clarify in my own mind, Mr. Moore was in the pay of the law firm of Mr. Lake; is that correct, or the client that Mr. Lake had?

Ms. **Reaux**. The client.

Senator **Simon**. The client. Okay. Aside from that one specific case, do you or members of your community have the feeling or is there evidence that there is a lack of sensitivity to minorities and those less fortunate, if I can ask that of all three of you?

Mr. **Bean**. Yes, sir, we do. We all feel—you mean outside of the case with Browning-Ferris?

Senator **Simon**. If I may interrupt before I ask the question. My staff has just pointed out that I have not called upon you to testify yet, Mr. Bean, and I apologize.

Mr. **Bean**. Yes, sir.

TESTIMONY OF CHARLES BEAN, HOUSTON, TX

Mr. **Bean**. To the Chairman, Senator Paul Simon, and all of the other distinguished Senators, we thank you very much for the invitation to participate in this hearing.

My name is Charles Bean. I reside at 7223 Pinehut, Houston, TX. I have three children, three daughters—Tangela, April and Hamasia. I am employed at the Goodyear Tire and Rubber Company at Houston, TX, where we make synthetic rubber. I have worked for Goodyear for over 22 years. I am 42 years old.

I am the ex-husband of Margaret Bean, charging party of *Bean* v. *Southwestern Waste Management*. I served as vice president of the Northeast Community Action Group before and after the trial, *Bean* v. *Southwestern Waste Management*. In the interest of time, I would like to move quickly to the point concerning Attorney Sim Lake's nomination for a judgeship for the Southern District of Texas.

First, I would like to go on record as strongly opposing the confirmation of Mr. Simeon T. Lake to judgeship for the Southern District of Texas or any other State. I am convinced that Mr. Lake had first hand knowledge about Image Transition. Furthermore, I am convinced that Mr. Lake knew of the ugly tactics that Mr. Moore, Ernest McGowan and others used to undermine our efforts to stop the Whispering Pines operation.

I am convinced that Mr. Lake knew the effect of giving that proposed settlement made by our attorney, Linda Bullard, to Councilman Ernest McGowan. To my knowledge as vice president of the Northeast Community Action Group, Councilman McGowan had no knowledge, no authorization—well, not no knowledge, but had no authorization nor any authority to monitor Whispering Pines or monitor the lawsuit.

I have here with me a copy of the motion that the council passed that were outlining or giving a description as to what Councilman McGowan and the other councilmen were to do as it relates to the landfill.

The City of Houston has lawyers for the purpose of checking into the legality of dealing with landfills and things of that nature. I believe Councilman McGowan was a mail carrier prior to becoming a city councilman. He had no background or experience in monitoring a lawsuit or operation of a landfill.

When I heard on radio station 102 in Houston, TX about the proposed settlement, I was badly hurt. It interfered with my reasoning toward the case to the point of asking my wife, at a later time, to write Judge Singleton a letter about the conduct of what I thought had happened about our attorney. I somewhat stopped my communication with Attorney Bullard because of the lack of trust, discontinued until some time after the trial.

At this time—I brought some pictures from the Littleyard Road that is making entrance to the site and to our community and I hope that this will, in some way, further our claims with you on the feeling of this matter. I would like for the Senate to look at those pictures. Mr. Chairman——

Senator SIMON. I am sorry to interrupt you, Mr. Bean, but we have another vote on and I am going to have to run over there real quickly and we will have a 10 minute recess. We will get right back and I would like to look at those pictures.

[Recess.]

Senator THURMOND [presiding]. The hearing will come to order. The Chairman said just to carry on and he would be back in a little bit. Mr. Bean, you may continue your testimony.

Mr. BEAN. Thank you, sir.

Sir, in behalf of the panel here, I would like to make it clear that we are not trying to re-fight the lawsuit that was lost concerning the landfill. We are merely trying to do what we think that is in the best interest for all of the people and we think that bias is one of the factors in the tactics that were used in handling the lawsuit. We are just using that for an illustration.

Mr. Chairman and the committee, I feel that the position—this position as a Federal judge is very important to all the people, especially blacks and minorities. The Federal court, to us, is our last hope for the due process. I am convinced that Mr. Lake cannot relate to poor people, blacks, and other minorities.

Finally, I would like to say that I attended the inauguration of Judge Gabrielle McDonald, Judge Norman Black, and others in about 1978 or 1979. I distinctly remember Senator Lloyd Bentsen administering the judges their oath. He said—Senator Lloyd Bentsen said, "Can you be as fair to the rich as to the poor?" This stuck in my mind and as I think about Attorney Sim Lake, the answer would be no, he cannot be as fair to the poor as to the rich.

We are just a few decades down the road from slavery. While we struggle to improve ourselves, to try to be productive citizens, and then BFI puts a dump around our houses, not just one dump but, according to the records that was admitted into court, there were five dumps placed in the neighborhood and I am thinking about the character of the people that would do such a terrible thing.

I would like to say, too, that we are not pleased with our image with reference to black people. We are not pleased with our image as shown on TV and other forms of media. It appears that we are drug pushers, robbers, welfare recipients and many other negative images. It is our will to grow and to become productive in every way. When people use tactics just like Mr. Lake, using the *Bean* v. *Southwestern Waste Management,* it moves us backwards.

I say, as I close this, in the interest of freedom, justice, and equality for the love of the people, I ask you respectfully to turn this nomination down. Thank you.

Senator **THURMOND**. I have a few questions here I would propound to each of you. We will just take them in this order.

What was your status in the *Margaret Bean* case?

Mr. **BEAN**. What is the present status of it?

Senator **THURMOND**. What part did you play in it?

Mr. **BEAN**. Margaret Bean was the charging party that became a class action lawsuit. Margaret Bean—I am her ex-husband. I was her husband at the time that the lawsuit was filed and I was also vice president of the Northeast Community Action Group, which supported the efforts as far as paying the expenses dealing with the lawsuit.

Senator **THURMOND**. Patricia Reaux, you want to answer the same question?

Ms. **REAUX**. Yes. I was the secretary for the Northeast Community Action Group and also one of the named plaintiffs in the lawsuit itself.

Senator **THURMOND**. And Ms. Louise Black?

Ms. **BLACK**. I was also a plaintiff and I was the acting treasurer for the group.

Senator **THURMOND**. Now, I believe your lawyer filed a motion for a temporary restraining order and preliminary injunction, alleging that defendant Browning-Ferris Industries paid agents to persuade leading residents in the area adjacent to the landfill in this case to accept the landfill and thereby discouraging and ultimately prevent plaintiffs from continuing their legal action.

Were you aware of these allegations when your lawyer filed that motion?

Mr. **BEAN**. For the restraining order? Is that the question?

Senator **THURMOND**. That is right.

Mr. **BEAN**. Yes, sir.

Ms. **REAUX**. Yes, we were.

Ms. **BLACK**. Yes.

Senator **THURMOND**. Before your lawyer filed the motion, had you informed her of the alleged discussions you had with Mr. Moore and Mr. Shannon?

Ms. **REAUX**. Yes, we did.

Mr. **BEAN**. Yes.

Ms. **BLACK**. Yes.

Senator **THURMOND**. I believe you all were not plaintiffs at the time this case was filed, but came in later after the restraining order and preliminary injunction?

Ms. **REAUX**. Could you repeat that?

Senator **THURMOND**. Were you plaintiffs at the time this motion was filed for the temporary restraining order and preliminary injunction? Were you plaintiffs at that time or did you come in later as plaintiffs?

Mr. **BEAN**. Yes, sir, I think I understand. My wife was the plaintiff initially from the beginning of the lawsuit. That covers the preliminary injunction hearing and everything.

Senator **THURMOND**. Were you aware that there were two hearings in late 1981 on the motion for a temporary restraining order and preliminary injunction and if so, did you ever execute any affidavit in support of that motion?

Mr. **Bean**. You mean in reference to Judge Gabrielle McDonald issuing that restraining order?

Senator **Thurmond**. Yes, before Judge McDonald.

Mr. **Bean**. We knew that our attorney was—we knew that she was going to do that, that she was going to ask for that because she consistently complained about the interference like hereinafter, we attended a radio talk program dealing with Ed Shannon, which was one of the persons that has been mentioned here.

Well, Ed Shannon, he badgered us on his radio program and that caused—that provoked her into looking more into detail about his role as to what was going on. So, yes, we had discussed the necessity of doing something about that behavior.

Senator **Thurmond**. Did you ever execute any affidavit in support of the motion?

Mr. **Bean**. No, sir.

Senator **Thurmond**. I believe the motion was dismissed by the judge, was it not?

Mr. **Bean**. Not to my knowing.

Ms. **Reaux**. We have a news clipping on the ruling where she issued a temporary restraint on them, on behalf of that same situation.

Senator **Thurmond**. Did you ever testify at either of those hearings regarding the alleged contacts made by Mr. Moore and Mr. Shannon?

Mr. **Bean**. During the hearing for the restraining order?

Senator **Thurmond**. At either of those hearings.

Ms. **Reaux**. Our president did, Mr. Charles Stredit. He was the only one that testified on behalf of our group.

Ms. **Black**. No, I did not. Mr. Stredit was the only one.

Senator **Thurmond**. Now, I might ask the two ladies a few questions.

I believe you both testified during the trial before Judge Singleton in 1984; is that correct?

Ms. **Reaux**. Correct.

Ms. **Black**. Yes.

Senator **Thurmond**. You both testified in 1984?

Ms. **Reaux**. Yes.

Ms. **Black**. Yes.

Senator **Thurmond**. During your testimony at that time, had you ever mentioned anything about this alleged infiltration by Mr. Moore and Mr. Shannon?

Ms. **Reaux**. No.

Ms. **Black**. No.

Senator **Thurmond**. Did your lawyer's motion before the court dealing with this question ever allege that Mr. Lake made contact with either of the plaintiffs, Mr. Moore or Mr. Shannon? Would you care to comment on that matter?

Ms. **Black**. I do not recall.

Senator **Thurmond**. How is that?

Ms. **Black**. I do not recall that information.

Ms. **Reaux**. On behalf of the motion, I did not have the involvement on the motion either.

Senator **Thurmond**. Is this the first time that you have raised the issue alleging the infiltration by Mr. Moore and Mr. Shannon and if so, why have you waited until now?

Ms. **Reaux**. No, it is not the first time on our behalf. If the records reflect back in the hearing, we had alleged back then that our group had been infiltrated and that we had had opposition from the community leaders and that there were people who had to have been feeding the opposition information from our camp. That was in the initial onset.

We went through several hearings and also the trial itself so there are certain points where you get a little confused as to what time frame. But no, that allegation was true from the onset.

Senator **Thurmond**. Did you raise the infiltration matter at the trial before Judge Singleton?

Ms. **Black**. No, I did not.

Mr. **Bean**. Our feeling was, why would we want to do that if Judge Gabrielle McDonald—it was our understanding that Judge Gabrielle McDonald had already issued a restraining order and that is why we brought this newspaper clipping to somewhat verify that. We had no reason to say anything else about it. We felt that that was under control after she made her comments or issued her order.

Ms. **Reaux**. And, Senator Thurmond, I would like to answer that question that on my part, at the time when we were in Judge Singleton's court, that issue did not come up. That was not a question asked and as witnesses, we were there to answer the questions that was posed to us and if I remember correctly, that was not one of the issues that we were asked about in our testimony.

Senator **Thurmond**. I think those are all the questions I have. Thank you, Mr. Chairman.

Senator **Simon**. Thank you. Let me direct this question to all three of you.

I am, frankly, not concerned about the details of a case. Any client, good or bad, is entitled to have a lawyer. I am concerned by what may underlie this and that is the very basic question.

Is there an insensitivity to minority groups on the part of the nominee? And do you have evidence of that beyond this one case?

Ms. **Reaux**. I would have to give my answer to the first part, yes, I do feel there was an insensitivity on the behalf of minorities. Now, on the other case issue, I have not attended any of his trial settings, other than what I saw in clippings. So, I could not validate that answer by having any knowledge of other cases. The only thing my opinion would be based on would be the initial case and the zeal which he used in that case.

Mr. **Bean**. I would like to add, I think in part of the questions that were asked to him earlier about his work performance as it relates to poor people are the same kind of questions you were asking the other attorney just a few minutes ago. I think in the record, I think he stated that he had represented a black man in Vietnam or something to that nature, but I do not even think he remembered his name.

I think that shows some kind of insensitivity since he remembered that he represented him, but it did not mean enough to even keep his name. So, I think that was outside of this case that showed some insensitivity to minorities or poor people.

Senator **Simon**. Ms. Black?

Ms. **Black**. Okay. Would you re-phrase your first question?

Senator **Simon**. Well, the question is, are we facing a nominee who shows a pattern of insensitivity? That is the fundamental question. And if that is the case, then we should know about it. If it is a matter of representing one client who has taken action that is unpopular, that is a different kind of a situation.

Ms. **Black**. I feel that Mr. Lake is insensitive to the blacks and minorities. Why? Because if he had not been insensitive——

Senator **Thurmond**. Speak into the microphone there.

Ms. **Black**. If he had not been insensitive, I feel that the action as far as knowingly have someone outside of our organization come in and destroy—try and destroy us and he knew about it, I feel like that is very insensitive.

On the second part, I know nothing about it.

Senator **Simon**. Do you have any specifics outside of this one case?

Ms. **Reaux**. No.

Ms. **Black**. No, I do not.

Senator **Simon**. All right. Do you have any further questions, Senator Thurmond?

Senator **Thurmond**. I do not think so, Mr. Chairman. Thank you very much.

Senator **Simon**. We thank you very, very much for being here.

Senator **Thurmond**. Thank you for the appearance.

Senator **Simon**. Let me add, if the gentleman, Mr. Bean, if you could stay. You mentioned you have some pictures.

Mr. **Bean**. I have already submitted them. We have the negatives, so we would be happy if you would keep them.

Senator **Simon**. We cannot put pictures in the record and we will get them back to you, but I would like to see them so that we have a little bit of a feel for what you are talking about.

Ms. **Reaux**. Thank you very much.

[Article follows:]

[From the Houston Chronicle, Nov. 5. 1981]

U.S. JUDGE ORDERS NO INTERFERENCE IN LANDFILL PROTEST

A Federal judge has ordered Browning Ferris Industries not to interfere with the activities of the Northeast Community Action Group trying to get the company to close its Whispering Pines sanitary landfill.

U.S. District Judge Gabrielle McDonald on Wednesday admonished Sim Lake, a BFI attorney, that he should not have disclosed a proposed settlement of a Federal court lawsuit concerning the landfill, at Little York and Mesa, to City Councilman Ernest McGowen.

Linda McKeever Bullard, attorney for the community group, told Judge McDonald that McGowen's discussions of the proposed settlement had caused dissension in the group and created the impression the case had been settled.

The group's lawsuit, which failed to stop creation of the landfill in 1979, is still pending as members press Browning-Ferris for a definite date for closing the facility. Homeowners say the dump causes unpleasant odors in the neighborhood and at area schools.

Waste disposal companies and public agencies are racially motivated, the community group said, because all landfills end up in black neighborhoods.

Senator **Simon**. Thank you.

Our next panel is Howard Hoover, Larry Veselka, and John Hill. I understand that Justice Hill is a former Chief Justice of the Supreme Court of Texas. We are very pleased to have all of you here but particularly honored to have Justice Hill here.

A PANEL, CONSISTING OF HOWARD HOOVER, ESQ., VICE PRESIDENT AND GENERAL COUNSEL OF BROWNING-FERRIS INDUSTRIES, HOUSTON, TX; LARRY VESELKA, ESQ., HOUSTON, TX; AND JOHN HILL, ESQ., HOUSTON, TX

Senator SIMON. Mr. Hoover, I see you are listed as the vice president/general counsel of Browning-Ferris Industries.

Mr. HOOVER. That is correct. I have submitted previously to the committee staff a letter that I believe is responsive and complete on all of the issues that the witnesses that just testified raised.

I would like simply to point out that in addition to that letter, every issue that these ladies and gentlemen raised was submitted before Judge Gabrielle McDonald, who this committee knows is one of the finest black civil rights leaders in the Houston area and a formidable Federal district judge, heard every issue raised by these witnesses and ruled against them. She did not grant the temporary restraining order on any of the issues these witnesses raised.

Secondly, and I think more importantly for this committee, Sim Lake had nothing to do with what we refer to normally in our business as a community relations program. He had no involvement with it and until these issues were raised before Judge McDonald, he had no knowledge of it.

I would like simply to add that as I mentioned in my letter, the siting of many kinds of facilities these days—be they landfills, be they airports, be they hospitals, be they jails—raise enormous emotions in the public eye. The public hearing process creates a forum for these issues to be ventilated and we understand that and try, as best we can, to create an understanding in the community that we can be good neighbors. I think we are, in most cases, good neighbors. We certainly strive to be.

I brought with me today a letter that out of the blue arrived a few weeks ago from a church pastor that's in the northeast Houston area. This is not a letter we solicited, but I want to submit it to the committee just as an indication that the community relations programs that we have undertaken in the northeast part of Houston are not something that started because of a single lawsuit 8 years ago.

They have been part of the culture of our company for a number of years for the reasons I stated and I think this letter is simply indicative that we do win over the hearts and minds of some of the people who are our neighbors in connection with these landfills. Thank you.

Senator SIMON. We will enter the letter referred to in the record. Mr. Veselka.

[Letter follows:]

Ralston Memorial Presbyterian Church
12026 BEAUMONT HIGHWAY
HOUSTON, TEXAS 77049

JOHN P. CRAIG
MINISTER

(713) 458-3161

July 5, 1988

JUL 1988

Mr. John E. Drury
President
Browning-Ferris Industries, Inc.
14701 St. Mary's
Houston, Texas 77079

Dear Mr. Drury:

We are neighbors. For the past 15 years I have pastored the Ralston Memorial Presbyterian Church which is located just a short distance from your solid waste station.

In behalf of my entire congregation I wish to express our sincere appreciation to you and your employees for the outstanding manner in which you have conducted your business. With the high traffic volume you experience in every 24-hour period, I imagine some debris litters the highway, but your crews clean up so rapidly, it is never in evidence.

We have never noticed the slightest odor escaping the plant, and cannot help but be impressed that from time to time members of your staff drop by the church just to check on any possible problems. None has ever occurred.

We wish to compliment you on your attractive landscaping, as well, which has inspired a few others to follow suit.

As you expand in the coming years you may find some who oppose your plant's locating in their areas. Should this problem arise, please feel free to ask them to contact me or to share this letter.

Sincerely,

John P. Craig

John P. Craig

In behalf of a congregation of 365 individuals, many of whom also live in your neighborhood, none of whom are employees of your company nor, to my knowledge, stockholders.

TESTIMONY OF LARRY VESELKA, ESQ., HOUSTON, TX

Mr. **Veselka**. Mr. Chairman and Senator Thurmond, it is my distinct pleasure to be here and I appreciate the opportunity. I am Larry Veselka and I come to you today in two capacities. First, as a citizen and practicing trial lawyer in Houston and second, as a partisan Democrat, as formerly the elected Chair of the Democratic party for Harris County from 1986 through 1988.

I come to address two things. One, to testify from my own knowledge about the fitness of Mr. Sim Lake to be a Federal district judge in Houston and, second, somewhat to respond to some of the issues raised in a letter that was submitted to this committee after the last hearing by David Jones.

The standard of review that I believe the Senate ought to use in looking at any nominee I think was ably put and as I heard it standing on the floor of the Omni Center last week by Michael Dukakis. He said that the determination of fitness for Federal judicial appointees ought to be one, integrity; two, intelligence; three, understanding of the U.S. Constitution. I would add four, willingness to work hard, but I think that is so ingrained in Mr. Dukakis, he automatically assumes that in others.

I think when you look at the record and the life of Sim Lake by that test, as I have done in the last 2 months, I think he measures up well and deserves confirmation. The basis of my opinion before coming here today—even though having been asked by the FBI about the nomination back early last winter—before I was willing to take a formal position and try to state in this type of environment as a former Democratic official is based on the following.

One, Mr. Lake and I have been opponents in a number of lawsuits and have sat across the table in negotiations. We also, in one lawsuit, after being opponents for a number of years, resolved the matters between our two clients and tried the case—I actually have tried a case with him and have worked writing briefs together with him, worked on putting issues together.

I also have very close personal friends who have worked for him, who have left the employ of his company, but worked for him as legal assistants in cases, other lawyers, who worked for him, including a black associate, who I know through other association with regard to Texas Southern University. I asked him what he thought about his ability to deal and relate to minorities, in particular, blacks.

On the basis of his personal recommendation, I am ready to stand forward to address these issues. Also by his reputation in the community, his involvement in litigation with regard to BFI based upon partners of mine who are related to that, and from a review of the entire file submitted by Mr. Lake to the committee, with the exception of his financial records. I have read the entire file of his questions, his responses to the questions of the committee, and all of these allegations that have come up.

On that basis, I can testify wholeheartedly that he has one, the integrity to be a Federal judge. He is a straight-arrow. He is a zealous lawyer, trying to protect his clients, but in arguing with him on what cases we can cite in a brief, I can tell you, he will not over-state a case to a judge. He will not take the position that he is not sure of. He is absolutely clear in the law.

Just from his service in the Army and in Vietnam; he has a distinguished career through his church activities, through his raising his family and through the bar; being active, spending hours and hours and hours working for the bar activities for the Houston Bar as an editor of a journal put out by the Houston Bar and in particular, involving and bringing in minorities and criminal defense lawyers and other lawyers, involved in that particular document—bringing in, I believe, probably the first black editors to contribute to the preparation of that document.

He has also been involved with Texas Southern University, as I know, being on the board with some of the law professors out there who have told me about their history with him for years. Second, I can testify directly that he is intelligent. He is a lawyer's lawyer, dedicated and devoted to the law.

He is a man who is willing to leave the income just as he is getting into his peak earnings years as a trial lawyer, from a major law firm, a distinguished law firm, where he has been a partner for over 10 years now, for the honor and prestige of a Federal judge. With what we are paying them, you know, he is a person who prides that work over anything else and I think that speaks volumes about Mr. Lake.

Finally, his devotion to the Constitution, I think, comes through his service during Vietnam. They train them well at Texas A&M in that regard, as I have seen his work in interpreting statutes as we worked on briefs together, both for and against each other.

Finally, I can testify that he will work any other lawyer under the table. He will just work you to death and I know that he would work just as equally for the people of Texas. As Justice Hill is going to address in a minute, I think you are going to see that we have a crisis situation in Houston of the need to get people on the bench.

Finally, if I may, I think those things, the concerns raised in Mr. Jones' letter—and I know Mr. Jones and I know a number of people that signed that letter—and so much of what they are raising is just supposition, just trying to create controversy so that there can be an excuse to hold up this nomination.

I, as a partisan Democrat, believe that our party has an obligation, as do all public officials, to see that the needs of the people of Harris County and all of the southern district of Texas are being served. When we have a non-political appointee—this is not a politically active or partisan man—who is known to meet the qualifications of integrity, intelligence, and devotion to his task and we have the kind of backlog in our cases, where to hold it up on some pretense of controversy that could delay somebody—whoever was going to be the nominated person—to be on that bench for some 18 months, I think: Is our party not doing its job to the people? Thank you.

Senator SIMON. Justice Hill.

TESTIMONY OF JOHN HILL, ESQ., HOUSTON, TX

Mr. HILL. Thank you, Senator Simon. I have filed with the committee a short statement.

Senator SIMON. We will enter your statement in the record and if you can keep your oral remarks to within 5 minutes, we would appreciate it.

Mr. HILL. I will do better than that. I simply want to speak first to the question of the sensitivity of the nominee because I know that is extremely important.

It just baffles those of us who know Sim Lake as well as I know him to hear any suggestion that he may be insensitive to people at any level. It is just so foreign to any concept that anyone who knows Sim Lake would have. I was not there at the trial. I do not know any of the details. You can ask Sim about that. It is just absolutely though uncharacteristic of anything that—he is a very mild, kind, courteous type of person. You do not have to be around him very long to see that.

I think when he testifies you will see it. He is very sensitive to people. I have not the slightest doubt and I could assure you I would not be here if I entertained the slightest doubt about that. I think you can have total comfort that he would be the kind of judge who would be totally sensitive and fair and impartial to everyone that came into the court.

The second thing is, any suggestion about his ethics again, would just leave anyone who knows him—and he is well-known; I know him well and favorably—to think that he would engage in anything unethical is totally foreign to the concept of the Sim Lake that we know. He is a highly deeply religious person. He is very ethical and he is very moral. He has paid his dues. Anyone who graduates first in his law class from the University of Texas and at the very tops of a class at A&M in history has got a lot on the ball.

I am not sure he is not the finest, best-qualified nominee that we have had in our State for a Federal District bench during this administration. I do not want to demean anyone else; there have been some good ones. But I am not sure we have had a stronger, better qualified. I am just thrilled to death at the idea that we can put this young man, right in the peak of his life at 44 years of age, over there to go to work. We need to put him to work because he will do a real good job.

We do have a crisis, as was mentioned by Senator Gramm. In checking with the clerk before I came up here, as of July 1, each judge in Houston had a civil docket consisting of 1,292 cases. That compares with 465 cases per judge in the southern district of New York, which has 27 authorized judgeships. We have eight authorized, but there are three vacancies.

You know the crisis that we are in. We really need this decision, if we possibly can have it, to get this young man to work because I think he will be fantastic. His nomination really is enthusiastically supported across the bench and the bar. I have a son-in-law that is the president-elect of the Texas Trial Lawyers. He thinks he is one of the greatest guys in the world. The kind of work my son does is plaintiff work. I am with what you might call a defense firm now.

I do not know of anybody—I really do not know of anybody at the bar or at the bench that is not supportive. Now, they invoked the name of Senator Bentsen. He is totally supportive, enthusiastically supportive of this nominee. He cares for all people is what I am trying to convey. I know that; I know him; I have seen him in the Supreme Court; I have been in cases where he has been involved; I know what I am talking about. I do not think you have a thing in the world to worry about.

I mean no discourtesy to the people that testified about whatever happened and you can address that. I was not there. But I know Sim Lake and he will make a fantastic judge that we will all be proud of, in my humble opinion. I thank you for the opportunity. I would not have come, but for the fact that there had been some suggestions raised that I know are not Sim Lake.

[The statement of John Hill, Esq. follows:]

STATEMENT OF JOHN L. HILL, JR.
in support of the nomination of
SIM LAKE
for
U.S. DISTRICT JUDGE, SOUTHERN DISTRICT OF TEXAS
before the
Senate Judiciary Committee
Washington, D.C.

(Senator Biden and) Members of the Committee: My name is John L. Hill, Jr. I reside at 3202 Huntington Place, Houston, Texas 77019, Phone (713) 630-0219. I am a senior partner in the law firm of Liddell, Sapp, Zivley, Hill, & LaBoon, with offices in the Texas Commerce Tower in Houston.

While I appear here representing myself, I believe the views expressed reflect the overwhelming views of those who know Sim Lake best. We believe strongly that he should receive your favorable recommendation on his nomination. As a trial lawyer representing plaintiffs and defendants and as an elected state Attorney General and Supreme Court Chief Justice, I have firsthand knowledge of the docket situation in the Southern District of Texas, and I know the nominee under consideration well and favorably. I implore you to promptly confirm Sim Lake for a judgeship in the Southern District and put him to work. We need him badly and he will do a terrific job. I have observed his legal work and know him to be extremely competent. He is a lawyer's lawyer who works his files and honorably represents his clients. He is not an ideologue. He is not a racist. He is not a political activist. He is just an excellent lawyer now willing to serve the total society as a competent, qualified, fair-minded jurist. His nomination is enthusiastically supported by many members of the Texas bench and bar, across the political spectrum and among the plaintiff and defense bar.

Graduating eighth in a class of 664 from Texas A&M with a degree in History, and first in a class of 123 from the University of Texas Law School, he has compiled an outstanding record as a civil trial lawyer, with some criminal law experience. He is respected and trusted, and it would be truly a sad day for justice in the Southern District of Texas were he not confirmed. I respectfully urge his approval and will be happy to answer any questions you may have.

Senator SIMON. We thank all three of you. Let me add this and you have, Justice Hill, expressed the concern that I have well. I do not disagree with the qualifications you mentioned, Mr. Veselka, for a judge. But I think there is another qualification that is needed and that is the sensitivity to those less-fortunate. Mr. Lake has less pro bono work that most of the nominees that we have before us.

You mentioned, Justice Hill, that he is enthusiastically supported across the board in the bar. Do you know of any black or Hispanic lawyers who are in favor of his nomination?

Mr. HILL. Yes. Andrew Jefferson supports his nomination. He is one of our distinguished leaders in the black legal community. I understand Al Green had some misgivings for awhile and I do not want to quote someone that I have not personally talked with. It has got to be hearsay, some of this, Senator, but I understand that he is satisfied. He is not here in opposition to him.

But I do not want to invoke—I am afraid that if I invoke names at this point, that then you will say, well, let's go talk to them. I mean, I can only say to you that I do not know of any and I can give you the affirmative name of Andrew Jefferson at this point in time in our community. I am not aware of any organized sort of opposition among the black community.

Senator SIMON. I guess what I am looking for is not organized opposition, but the affirmative. If I may ask the other two witnesses, are there things in the background of Mr. Lake that suggest to you that he would be sensitive to those less fortunate in our society?

Mr. VESELKA. If I may, Mr. Chairman, yes. One, as any working lawyer knows, the person you spend most of the time with in your life, even more than your family virtually, is your secretary. I know that for all the years that I have known him professionally, he has had a black lady as his secretary and they have obviously been able to get along. Now, that is not the only kind of relationship you want to talk about in testing sensitivity.

I also have seen a letter that has come from Ken Carrington, who is the associate dean of the Thurgood Marshall School of Law out at Texas Southern University, who has known Mr. Lake for years and supports him wholeheartedly and has written the committee in that regard.

And I talked personally to a Mr. Alton Hall, who is a black lawyer with another firm who used to work directly with Mr. Lake and on a very personal, confidential basis said, look, you know, I am looking into this to see if I want to weigh in one way or the other. Is there anything in your years of working with him that you would read about his being insensitive or not? And he said, he is very sensitive, very aware, tunes into people.

He says, he does not wear it on his sleeve because he is so much a student of the law that he is essentially color-blind. He said that he wholeheartedly supported him. He does not work for Mr. Lake. This was not a meeting that I had cleared, I had not talked with Mr. Lake about. I called up—I sought out that individual to ask him, as a friend, what he thought and that is what he said.

Senator SIMON. Do you have anything to add, Mr. Hoover?

Mr. HOOVER. I have known Sim, I think now, for approximately 15 years. I can just tell you that he is one of the most people-sensitive lawyers I know. Many times, trial lawyers particularly, develop a certain aggressiveness and that sometimes comes forward in their personal lives and in their private lives and sometimes, it comes out in the courtroom. Sim is not that kind of man. He is a very sensitive human being.

Senator SIMON. All right. Senator Thurmond.

Senator THURMOND. Thank you, Mr. Chairman. Judge Hill, in your opinion, does Mr. Lake possess the integrity, judicial temperament, and professional competence to serve as a U.S. district court judge?

Mr. HILL. Absolutely, and in the highest degree, in my opinion, based upon my knowledge of Sim Lake.

Senator THURMOND. Do you know of any insensitivity on his part against people because of their race, color, religion, sex, or otherwise, that would deprive him of serving in a fair and judicial manner?

Mr. HILL. No, I do not, and he did serve in Vietnam, as was brought out. He was a Captain. He did a lot of courts-martial which I think will hold him in good stead.

Senator THURMOND. He did what?

Mr. HOOVER. He has done courts-martial. He had experience at that level. I am not personally familiar with what he did other than he was involved in courts-martial cases, defending people as well as in prosecutions. And in pro bono work, let me just say this. I think all of us who are with larger firms wished that we did more pro bono work.

Perhaps the nature of the firm practice does not allow it to do all that we would like to do. But we do a lot and Sim Lake's does a lot. I think his record is fairly strong in that regard. I think he has probably gotten that before the committee.

I know Fulbright and Jaworski, starting with the legacy of Colonel Jaworski, who, as you know, was extremely sensitive to all people, probably of all the law firms I know have done more public service type work, volunteering for things. Pro bono work may not always come out just in representing a particular person, although Sim has done a lot of that. They have had four State Bar presidents, I believe, in the last 25 years and that takes 2 years out of a lawyer's life and somebody has to pay for that.

So, I would just say that if you look at the total picture of this person's activity with that good law firm, that you will see a lot of sensitivity on the four corners of it.

Senator THURMOND. Mr. Hoover, would you answer the same two questions I just propounded to Judge Hill?

Mr. HOOVER. I think I could answer them the same way Judge Hill did. I believe the correct way to answer them is yes and no, if I remember the order correctly.

Senator THURMOND. Mr. Veselka, would you answer the same two questions?

Mr. VESELKA. Yes, sir. I would totally agree. I would totally concur with Chief Justice Hill and Mr. Hoover that he has the intelligence and the judicial temperament and integrity and I do not believe that he is insensitive to any minority or person based on race, gender, religious beliefs. I believe that he is a student of the law and he places the law first and he is devoted to the law.

Senator **Thurmond**. You think he would be fair to all people coming before him as a judge?

Mr. **Veselka**. Unequivocally, sir, because that is what the law says.

Senator **Thurmond**. Do you think he would not discriminate regardless of race, color, sex, national origin or any other reason?

Mr. **Veselka**. I would not be here if I did not believe that, sir.

Senator **Thurmond**. Now, I have a letter here that I think I had better read—it is very short—from McKen V. Carrington, associate dean, Texas Southern University, Thurgood Marshall School of Law, Houston, TX. This was written to Senator Biden, who send me a copy.

> Dear Chairman Biden: It has recently come to my attention that Simeon Lake is scheduled for a confirmation hearing before your committee. I write this letter simply to support his nomination. I have known Sim Lake for more than 4 years. It appears that we served on the editorial board of the Houston Lawyer. It is my belief and the belief of all I come in contact with in the Houston/Harris County area, that Sim Lake has the stuff that Federal judges are made of. His intellectual depth is limitless.
>
> As a black lawyer, law professor, and administrator at a historical black law school, I do not take this recommendation lightly. In my association with Sim Lake, I find that he has worked well with the black professionals with whom he has come into contact. I firmly believe that he has the temperament to be fair and impartial.
>
> In making this recommendation, I am aware that some persons in Houston have raised questions regarding Sim Lake's representation of a client, who sought to locate a landfill in a black community. I believe that Mr. Lake represented his client well and did credit to the profession in doing so. His efforts cannot be faulted.
>
> Moreover, he has both the intellectual skills and the fairness required of the position. If I have convinced you to see things my way, it is only because Sim Lake has given me so much to work with in the preparation of this letter by being the kind of successful and qualified person he is. This recommendation is of the highest order and it comes without any reservations.
>
> If you have any questions concerning any matter discussed in this letter or about my opinion as to the qualifications of Sim Lake to serve in the Federal judiciary, please feel free to contact me.

He gives his telephone number. As I said, that was signed by McKen Carrington, the associate dean of this black law school.

We also have letters here in support of Sim Lake from Judge Norman Black, U.S. District Court, Southern District of Texas; Judge David Hittner, U.S. District Court, Southern District of Texas; Judge Lynn Hughes, U.S. District Court, Southern District of Texas; Judge Kenneth Hoyt, U.S. District Court, Southern District of Texas. And I would just call attention to the associate dean of the law school.

Mr. **Hill**. Judge Hoyt is black.

Senator **Thurmond**. You know these judges I just referred to?

Mr. **Hill**. Yes, I do know all of them well and favorably and I just mentioned, since the subject of other blacks support was raised by Senator Simon, that Judge Hoyt is black.

Senator **Simon**. And one of these judges is black?

Mr. **Hill**. Yes. Judge Kenneth Hoyt.

Senator **Thurmond**. Judge Kenneth Hoyt is a black judge?

Mr. **Hill**. He is a black Federal judge we are very proud of in our district and he is one that is in support of the nominee and knows a lot about the nominee.

Mr. **VESELKA**. And he had bipartisan support for getting him confirmed and pushed through when he came up earlier in the year.

Senator **THURMOND**. I will not take time to read all these letters. From Judge Hoyt, I might just read one paragraph.

> There are two people who have been nominated by the President for these positions. I understand that Sim T. Lake is in a position to be reported to the floor. The record has been developed in the American Bar Association's committee and has returned a well-qualified rating. An expedited consideration would be beneficial to us all.

Senator **SIMON**. We will put all of the letters in the record.

Senator **THURMOND**. Without objection, Mr. Chairman, we will put them all in the record.

Senator **SIMON**. All right.

Senator **THURMOND**. And if there is no objection, we will put this letter by this associate dean of the law school I just read.

Senator **SIMON**. That will be entered in the record, also.

Senator **THURMOND**. And also this letter by Mr. Hoover, who is here, who sets out—he has already testified, but it would be of great benefit.

Senator **SIMON**. We will put that in the record, also.

[Letters follow:]

TEXAS SOUTHERN UNIVERSITY
THURGOOD MARSHALL SCHOOL OF LAW
3100 CLEBURNE AVENUE
HOUSTON, TEXAS 77004

July 25, 1988

The Honorable Joseph R. Biden,
Chair Senate Judiciary Committee
SR 489
Russell Senate Office Building
Washington, D.C. 20510

Dear Chairman Biden:

It has recently come to my attention that Simeon Lake is scheduled for a confirmation hearing before your Committee. I write this letter simply to support his nomination. I have known Sim Lake for more than four years - a period that we served on the editorial board of the Houston Lawyer.

It is my belief and the belief of all I come in contact with in the Houston, Harris County area that Sim Lake has the "stuff" that federal judges are made of. His intellectual depth is limitless. As a Black lawyer, law professor, and administrator at a historically-black law school, I do not take this recommendation lightly. In my association with Sim Lake, I find that he has worked well with the Black professionals with whom he has come into contact. I further believe that he has the temperament to be fair and impartial.

In making this recommendation, I am aware that some persons in Houston have raised questions regarding Sim Lake's representation of a client who sought to locate a land fill in the Black community. I believe that Mr. Lake represented his client well and did credit to the profession in doing so. His efforts cannot be faulted.

Moreover, he has both the intellectual skills and the fairness required for the position. If I have convinced you to see things my way it is only because Sim Lake has given me so much to work with in the preparation of this letter by being the kind of successful and qualified person he is. This recommendation is of the highest order and comes without any reservations.

If you have any questions concerning any matter discussed in this letter of about my opinion as to the qualifications of Sim Lake to serve in the Federal Judiciary, please feel free to contact me at (713) 527-7126.

Sincerely,

McKen V Carrington

McKen V. Carrington
Associate Dean

/nls

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
UNITED STATES COURTHOUSE
HOUSTON, TEXAS 77002

CHAMBERS OF
KENNETH M. HOYT

July 12, 1988

The Honorable Patrick J. Leahy
The Honorable Joseph R. Biden, Jr.
The Honorable Strom Thurmond
United States Senate
Washington, D.C. 20510

Gentlemen:

As the most recent active judge in the Houston Division of this court, I write to ask a non-partisan favor for the federal system of the administration of justice.

Of the eight judgeships for this division, two are vacant, one is currently inactive and will become vacant this month, four are carrying full dockets, and the district's chief judge is carrying a one-half case load. Four and one-half active judges for a case load that would be considerably above the national average even if all eight positions were filled is a severe strain.

The Southern District has been allocated three additional judgeships in the authorizations of the judicial council for the past three years. The divisions other than Houston are fully occupied, but their case loads are also overwhelming.

There are two people who have been nominated by the President for these positions. We understand that Sim T. Lake is in a posture to be reported to the floor. The record has been developed and the American Bar Association's committee has returned a well qualified rating. An expedited consideration would be beneficial to us all.

The delay in replacing judges is especially hard on the Houston Division because it has been at full strength less than one-third of the time for the past five years. Irrespective of the politics in the next nine months, justice should not be allowed to languish unattended.

Thank you very much.

Sincerely,

KENNETH M. HOYT
United States District Judge

db

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
UNITED STATES COURTHOUSE
HOUSTON, TEXAS 77002

U. S. DISTRICT JUDGE
(713) 221-9711

July 13, 1988

The Honorable Joseph R. Biden, Jr.
United States Senator
489 Russell Senate Building
Washington, DC 20510

Dear Senator Biden:

As one of the active United States District Judges in the Houston Division of the Southern District of Texas, I wish to take this opportunity to write and respectfully ask for your positive consideration and assistance in alleviating a major problem that we are facing in the Houston area.

Of the eight United States district judgeships allocated for this division, two are vacant; additionally, one is currently inactive and will become vacant later this month. Four judges are carrying full dockets and the district's chief judge, who is also based in Houston, is carrying a one-half case load. Based upon the figures available to us, each of the judges in Houston are carrying a case load in excess of two times the national average for federal district courts.

The Southern District of Texas has been allocated three additional judgeships in the authorizations of the Judicial Conference for the past three years. The divisions in the Southern District, other than Houston, have no vacancies and their case loads are also overwhelming.

There are two individuals who have been nominated by the President for the vacancies in the Houston Division. It is my understanding that Simeon Lake is presently under consideration by the Senate Judiciary Committee. His record has been fully developed and the American Bar Association's committee had returned a "well-qualified" rating. An expedited consideration by the Committee would be, I believe, in the interest of the administration of justice. The delay in replacing judges is especially hard on the Houston Division as it has been at full strength less than one-third of the time for the past five years. Politics aside, I believe that the situation in our area is most unfortunate and any assistance that you might be able to extend to us would be greatly appreciated.

Thank you for your consideration.

Sincerely,

David Hittner

DAVID HITTNER

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS

Lynn N. Hughes
Judge
515 Rusk Avenue
Houston, Texas 77002

July 12, 1988

The Honorable Patrick J. Leahy
The Honorable Joseph R. Biden, Jr.
The Honorable Strom Thurmond
United States Senate
Washington, D. C. 20510

Gentlemen:

As an active judge in the Houston Division of this court, I write to ask a non-partisian favor for the federal system of the administration of justice.

Of the eight judgeships for this division, two are vacant, one is currently inactive and will become vacant this month, four are carrying full dockets, and the district's chief judge is carrying a one-half caseload. Four and one-half active judges for a caseload that would be considerably above the national average even if all eight positions were filled is a severe strain.

The Southern District has been allocated three additional judgeships in the authorizations of the judicial council for the past three years. The divisions other than Houston cannot assist us because their caseloads are also overwhelming.

There are two people who have been nominated by the President for the current vacancies. I understand that Simeon Lake is in a posture to be reported to the floor. The record has been developed and the American Bar Association's committee has returned a well qualified rating. An expedited consideration would be beneficial to us all.

The delay in replacing judges is especially hard on the Houston Division because it has been at full strength less than one-third of the time for the past five years. Irrespective of the politics in the next nine months, justice should not be allowed to languish unattended.

Thank you very much.

Yours very truly,

N. Hughes

Lynn N. Hughes

United States District Court
Southern District of Texas
Houston, Texas 77208

July 12, 1988

Norman W. Black
U. S. District Judge

The Honorable Patrick J. Leahy
United States Senate
The Senate Office Building
Washington, D.C. 20510

The Honorable Joseph R. Biden, Jr.
United States Senate
The Senate Office Building
Washington, D.C. 20510

The Honorable Strom Thurmond
United States Senate
The Senate Office Building
Washington, D.C. 20510

Dear Senators Leahy, Biden and Thurmond:

In the midst of the present shortage of district judges in Houston, the taxpayers with matters before this Court need and deserve your help.

We are only authorized eight judgeships in Houston even though we have been "authorized" three more by the Judicial Council. Effectively, we are now attempting to function with less than five. We have two vacancies, and a third judge is inactive pending her resignation. Our Chief Judge carries a half load of civil cases in order to have time for his administrative duties.

Our inability to try civil matters promptly has become serious, and litigants are beginning to suffer.

I understand that there are two nominations pending and that one has already been before the Judiciary Committee. Since they are both well qualified, you would serve the cause of justice greatly if these nominations can be speeded along. While I certainly understand the practical political considerations, it appears that Houston can certainly be considered an unusual emergency situation. The litigants cannot be expected to pay their lawyers for nine months to a year longer than necessary while we wait for judicial help.

Please give us any assistance in your power. Everyone involved in the system will appreciate it.

Yours truly,

Norman Black

Norman W. Black

BFI

BROWNING-FERRIS INDUSTRIES

P.O. BOX 3151 • HOUSTON, TEXAS 77253 • 713/870-8100

HOWARD S. HOOVER, JR.
Senior Vice President
and General Counsel

July 22, 1988

The Honorable Joseph R. Biden, Jr., Chairman
Senate Judiciary Committee
SR-489 Russell Senate Office Building
Washington, D.C. 20510

Re: Judicial Nomination of Simeon T. Lake

Dear Senator Biden:

I am writing to express my strong support for the nomination of Simeon Lake to the United States District Court for the Southern District of Texas. I also want to correct what I perceive to be inaccurate and unfair criticism of Mr. Lake. This criticism attempts to discredit him by misrepresenting and attributing to Mr. Lake certain activities carried out solely by BFI and not Mr. Lake. To the extent that Mr. Lake's prompt and favorable consideration is being delayed or thwarted by virtue of this inaccurate and unfair criticism leveled at him by litigants Mr. Lake defeated in court -- and indeed, regarding activities conducted solely by BFI and not Mr. Lake -- I wish to comment.

I understand that Mr. Lake was questioned about his representation of BFI in connection with its Whispering Pines Landfill in the northeast part of Houston. The suggestion implied by these questions was that community relations activities undertaken by BFI with respect to this landfill were related to or somehow tainted Mr. Lake's representation.

What follows is a perspective on the Whispering Pines matter that your staff undoubtedly has not heard from individuals seeking to discredit Mr. Lake. BFI, like other organizations (both public and private) that seek to site facilities (jails, airports, and landfills, to pick three examples) and are often unwelcomed by nearby residential communities, continually grapple with how best to address the Not In My Backyard (NIMBY) syndrome. Like other organizations, BFI often seeks to take the pulse of the local community before opening or expanding such a facility (in BFI's case, landfills). We often attempt to contact neighborhood residents and community leaders to inform them about the landfill, including information about landfill construction and operating procedures, safety standards, traffic flow, groundwater monitoring, etc. We also encourage and arrange tours of the landfill site itself.

CORPORATE OFFICES: 757 N. ELDRIDGE AT MEMORIAL DRIVE • HOUSTON, TEXAS 77079 • TELEX 794 592

During 1979 and 1980 we engaged in these activities in areas around the Whispering Pines Landfill. During 1980, and before the landfill opened, but after U.S. District Judge Gabriele McDonald had ruled in our favor on the Plaintiffs' motion for a preliminary injunction, we retained a firm called Image Transition, Inc. This organization sampled public opinion in the area and recommended a three-phase program consisting of: (1) a public service advertising campaign; (2) a public education program consisting of slide presentations shown to local civic groups, churches, etc.; and (3) sponsorship of selected community projects such as school aid programs, softball leagues, neighborhood recreation projects, etc.

Following the recommendation of Image Transition and based upon our own experience, BFI engaged in a number of activities designed to assure neighborhood residents in the Northeast Houston area that we are a concerned corporate citizen. The program is still active, nine years later. Even before the Whispering Pines Landfill opened, BFI voluntarily conducted a clean-up effort to rid the Mesa Drive-Little York roads area in the vicinity of Whispering Pines Landfill of refuse and litter and to improve the appearance of the surrounding area. I am attaching a letter from First City Bank Northeast, N.A. (one of of the leading banks in Houston) expressing its appreciation for these activities. Since then, at least once a week a special BFI crew has continued to clean up litter and debris from Little York Road. BFI has also sponsored five students from Smiley High School (which is across Little York Road from the landfill) to the "Close Up" Program. This program allowed students to visit Washington, D.C. and participate in a week-long program dealing with the workings of the federal government.

In June 1986 BFI committed $250,000.00 ($50,000.00 for five years) for the construction of a child care facility at the Northeast Houston branch of the YMCA. We also recently cleared away debris from in front of the main Northeast YMCA building to allow full visibility of the facility for the first time in a number of years.

In addition to these activities, BFI has contributed to the Northeast Cultural Arts Council's Summer Arts Enrichment Program and to Smiley High School and has participated in a number of local activities through the Northeast Houston Chamber of Commerce. Recently, BFI has agreed to participate with the City of Houston in a program designed to rid neighborhoods of dilapidated houses, which often serve as drug distribution centers.

My purpose in describing these activities is to place them into perspective for you and to rebut the unfounded inference that our community relations program was designed to "infiltrate, intimidate or otherwise improperly influence" the outcome of a purported civil rights lawsuit promoted by a few plaintiffs and their lawyer (and the lawyer's husband) against the State of Texas and BFI dealing with the Whispering Pines Landfill. These community relations activities were wholly independent of the legal issues and defenses in that case. Sim Lake was not asked for input into these community relations activities, was not involved in implementing them, and was not advised or consulted about the details of these activities when they were carried out. Furthermore, whatever merit the plaintiffs or their lawyer believed present in their lawsuit was rejected first by Judge McDonald (formerly the leading black civil rights lawyer in Houston), second by U.S. District Judge John Singleton, and finally by the Fifth Circuit Court of Appeals.

We do not believe it fair or appropriate for Mr. Lake's ethics or conduct as a lawyer in this case to be criticized. In my opinion, what the Judiciary Committee may now be hearing from Mr. Lake's critics is little more than the complaint of the unsuccessful litigants and their lawyer who evidently seek an opportunity to pursue in your Committee allegations that were rejected in court. I believe BFI's legitimate community relations activities are effective in fostering a better community understanding and acceptance of our landfills. In any event, Mr. Lake was not responsible for our community relations activities, effective or not.

I respectfully submit that there is no legitimate reason why Mr. Lake's confirmation should be further delayed or thwarted for his role as a lawyer on behalf of BFI. I have known Mr. Lake for years and have found him to be a thorough, fair and competent lawyer who would be a credit to the federal bench.

Sincerely,

HSH/cb

enclosure

cc: Senator Strom Thurmond
SR-218 Russell Senate Office Building
Washington, D.C. 20510

FIRST CITY BANK
NORTHEAST, N.A.

Glenn Younts
Vice President & Cashier

May 5, 1980

Browning-Ferris Industries
Corporate Office
P.O. Box 3151
Houston, Texas 77001

Gentlemen,

It has been brought to our attention the clean up efforts your company has made to rid the Mesa Drive-Little York area of garbage and debris along the roadside. On behalf of First City Bank-Northeast, N.A. its Board of Directors, area merchants and residents we would like to express our appreciation for your concern over the cleaniness and appearance of the area in which we live and/or work.

Very truly yours,

Glenn Younts

Glenn Younts
Vice President & Cashier

8305 MESA DRIVE, P.O. BOX 23248, HOUSTON, TEXAS 77028, TELEPHONE (713) 631-3300
MEMBER FIRST CITY BANCORPORATION OF TEXAS, INC.

Houston

HOUSTON FORWARD TIMES, JUNE 28, 1986

Section-B

1B

BFI Pledges $250,000 To YMCA Northeast Branch

HOUSTON. Browning--Ferris Industries, Inc. (NYSE-BFI), announced today a $250,000 grant to expand the child care facility at the Northeast Branch of the YMCA (7901 Tidwell).

Don L. Fitch, BFI Divisional Vice President for Public Affairs, presented the first of five annual installments of $50,000 to YMCA officials during a ceremony today at the Northeast Branch.

"Browning-Ferris Industries is proud to be able to assist the YMCA in upgrading its Northeast Branch," Fitch said. "We have a continuing interest in Houston area projects that benefit the communities we live and work in."

B. Lowell Overby, Executive Director of the Northeast Branch, said the existing child care facility does not meet the current demand. "This gift will allow us to more than triple the number of youngsters that we will be able to serve," he said. "It will also ensure a continuation of the quality child care we provide, which includes a curriculum and periodic testing."

ALSO ATTENDING THE BFI grant announcement ceremony was Houston City Councilman Ernest B. McGowen. He said the community served by the Northeast Branch will benefit both short-term and long-term from the scheduled improvements.

"The excellent care provided for pre-school youngsters through the YMCA facility, will definitely increase the quality of life in the area," McGowen said.

The BFI $250,000 grant represents half of the total scheduled to be spent for improvements at the Northeast Branch.

Bev R. Laws, President of the YMCA of Greater Houston Aea, said construction will begin in late 1987 with completion scheduled in time for use during the summer of 1988.

LAWS SAID THE BFI contribution is the largest single gift ever designated for the Northeast Branch and one of the largest in the area.

The present facility was constructed during the 60's and includes a gymnasium, locker rooms, small child care area, offices and an outdoor swimming pool. Improvements planned are locker room renovations, a large exercise room and overall upgrading of the main building.

The Northeast branch primarily serves the North Forest School District with child care, day camping, aquatics, youth sports, fitness and special programs.

NORTHEAST BRANCH YMCA Executive Director B. Lowell Overby (kneeling left) and Don L. Fitch, Browning-Ferris Industries, Inc. Divisional Vice President for Public Affairs, are surrounded by happy child care students following BFI's announcement of a $250,000 grant to expand the day care facility at the branch. Construction will begin in late 1987 with completion scheduled by summer 1988."

Newberry

YMCA now visible

"We can now be seen from the street," was the excited comment of Lowell Overby, executive director of what was the barely visible Northeast YMCA.

A few weeks ago the Y was tucked away behind a mass of underbrush and trees — invisible to passing motorists.

But a recent cleanup effort has changed all that.

Being hidden behind all that vegetation was a problem for the Y because many residents in the area didn't know it existed.

"I could be somewhere — a meeting or someplace — and say something about the Y, and people would look surprised and tell me they didn't even know a Y was there," Overby said while laughing out loud.

But the invisible Y is no laughing matter to Overby. He is determined to make it a well-known part of the community.

He said even some residents who *know* the Y exists have been reluctant to use it because of security problems. Indeed, that's what this cleanup is about.

Brown & Root, that community-minded international business firm, provided the men and equipment to clear the land in front of the building, which faces Tidwell. Browning-Ferris Industries provided the men and equipment to haul away the leveled trees and brush. Two big companies working for the betterment of the community.

One reason the land was overgrown with brush was because it did not belong to the Y. But the landowners remedied that problem by donating the 3.9 acres to the Y, giving it the much-needed boost toward better visibility.

So what is the Y going to do to make needed improvements on the newly cleared property?

"Mr. Overby plans to put in a jogging track, a playground area and a picnic area," said office manager Gloria Tezeno. She added that work to install the equipment on the tree-covered acreage will begin next week.

And none too soon.

Overby was concerned that the Northeast branch was being viewed negatively by much of the community, and that its membership and citizen participation was too low.

Indeed, when I visited the Y, only a couple of people were there, but Overby envisions a time when the grounds will be teeming with visitors.

He now has the concern and backing necessary to help make that dream come true. Presently, all the Y offers is a pool, basketball court and football field for physical activities. It also has a day care center that picks up and returns some of the children.

But that's not enough for the hard-driving Overby.

What he wants to do now is attract entire families and senior citizens to the facility. He said he hopes the new picnic area and playground will be a big drawing card for families. He also hopes exercise-minded senior citizens will use the jogging track to take daily walks.

And to improve the safety factor at the Y, Overby has asked Houston Lighting & Power Co. to install lights around the property. He is also considering erecting a fence around the area to make visitors feel even safer.

In addition to improving security, Overby said he will advertise when there are membership drives and will promote the activities offered at the Y.

He added that membership fees are $65 a year for any size family, $45 a year for an individual membership, $15 for youth memberships and $10 for senior citizen memberships.

Outside of the help it gets from businesses like Brown & Root, BFI and HL&P, where does the Y get its funding? Surely those membership fees can't cover it all.

"Most of our funding comes from the United Way," Overby answered. "They give us about 52 percent of our budget. There are only two other Y's that receive more."

Indeed, Overby appears to have the little-used Y well on its way to prominence in this northeast Houston commmunity. He has gotten companies and volunteers to help him in areas where funds are short. He has instituted new programs and has made some repairs to the building.

Now all he has to do is inform the citizens about the Y's benefits — because *visibility* is not as big a problem as it once was.

Senator **THURMOND.** Mr. Chairman, I just want to say for the record that I think—I do not know if I remember a nominee coming before this Committee since I have been here that is more overwhelming, more convincing that the nominee is not only well-qualified, according to the American Bar Association, but has the temperament, integrity, and professional competence and is recommended by black judges, black law school deans, white judges, past chief justice of the Texas Supreme Court, and other prominent people who have come here today, Mr. Veselka and Mr. Hoover.

It seems to me that there really should be no question about his qualifications and in his fairness after attending this hearing.

Senator **SIMON.** We thank all three of you for coming to testify.

Mr. **HILL.** Thank you, Senator.

Mr. **HOOVER.** Thank you, Senator.

Mr. **VESELKA.** Thank you.

Senator **THURMOND.** Thank you, gentlemen, for appearing.

Senator **SIMON.** And Mr. Lake, if you can testify and I would simply remind you that you were sworn in the last time and that that continues.

TESTIMONY OF SIMEON T. LAKE III, HOUSTON, TX

Mr. **LAKE.** Thank you, Mr. Chairman and Senator Thurmond. Many nominees are lucky enough to get one hearing. I am fortunate enough to have two before this committee and I appreciate the promptness of this second hearing and the opportunity to respond to any questions that you have.

I would like to make a few brief comments about some of the testimony you have had earlier today. First of all, I am sensitive to the fact that someone who loses a lawsuit is upset about the process. As a trial lawyer, I have lost lawsuits and it is something that you remember. But I would like to say that the issues that have been raised by Ms. Reaux, Ms. Black——

Senator **SIMON.** Excuse me, if I could interrupt you, Mr. Lake. Senator Thurmond is going to a meeting that I am supposed to go to, too, but I am going to stick around here for just a little bit longer. Senator Thurmond.

Senator **THURMOND.** Mr. Lake, I have another appointment with the head of government of another country who is here and I feel like I ought to go. I do not think you need me here. You have got an able Chairman here who I have found fair and just. I am sure that he will look after your matter.

If there is anything we can do further, we would be glad to do it. I know of no reason that you should not be confirmed and I will be glad to support you in every way I can.

Mr. **LAKE.** Thank you, Senator.

Senator **THURMOND.** Thank you, Mr. Chairman.

Senator **SIMON.** Thank you.

Mr. **LAKE.** As I was saying, Mr. Chairman, I can understand why someone would be upset about the prospect of losing a lawsuit. I can only say that the issues that these two ladies and this gentleman raised today were fully aired before Judge McDonald. Judge McDonald denied a preliminary injunction regarding the siting of the landfill after a lengthy hearing and after the filing of briefs in a published opinion that I am sure the committee has.

The matters regarding this infiltration—there were two hearings on that issue in 1981 before Judge McDonald. None of these people ever made those allegations then. One of the hearings lasted a day and this is the first I have heard about this allegation. They were filed with the motion papers, certain bills sent to BFI. I wish to reiterate that I had nothing to do with the community relations activities, however you and the other members of the committee view those activities.

My job was to defend the lawsuit as best I could and represent my client. I was successful both before Judge McDonald, who before she came to the bench, was the premier black plaintiffs civil rights lawyers in Houston and was the first black Federal judge we have had in Houston. I was later successful before Judge Singleton and before the fifth circuit. I deeply regret that these people are upset about the process of that lawsuit, but I want to assure you, Mr. Chairman, that I was not involved in any community relations efforts. My job was to try the lawsuit.

I also wish to respond to Ms. Black's statement that I am insensitive to blacks because I complained to the judge about being hassled in an elevator or something. My recollection is that another lawyer made that complaint, not me. I am sensitive to blacks. I did not want to bring this out to the committee because I am a private person, but my secretary for many years and my secretary if I am confirmed will be black. The lawyer whose office is next door to me is a black.

When I moved to Houston in 1969, I worked registering blacks to vote in the 1970 election. I went door-to-door signing people up and spoke in black churches on Sunday, trying to encourage people to sign up to vote. And although I may be with a law firm that has a national reputation now, I did not start out in a position of wealth or power or anything else. I was born and my first address was on South Kedzie Avenue in Chicago and I will ask you to take judicial notice that that is not a well-to-do neighborhood.

I went to work when I was 15 and have worked ever since and have tried to do the best I could. I have been lucky enough to benefit from the system we have and I would give everybody, if I am lucky enough to be confirmed, an equal hearing and an equal opportunity because I believe that justice is blind.

Unless the Chairman has any questions, those are all the remarks that I wanted to make.

Senator SIMON. Let me just make a brief comment for any response that you may wish. I think you understand where I am coming from. I want to make sure that justice is really done. I want to make sure that people in Texas, who look to the Federal court, see Judge Lake there and say, here is a person I can get justice from, whether they are black, Hispanic, women, who they are.

I hope you will, if you are confirmed, go out of your way in whatever ways you know you can in good taste as a judge to make that clear. I think that is really important. Let me just ask one question. The Houston country club that you belong to—I note that while you indicated that the bylaws do not discriminate, in fact, they do somewhat between men and women.

But in terms of black or Hispanics, are there members or is there a sensitivity on the part of that country club to this problem and is there on the part of the nominee?

Mr. **Lake**. I think the answer to both questions is yes. I think we visited this question briefly in my hearing in May. The club has women and people of various religious backgrounds and has had for a number of years. The club has no black members. As near as I have been able to determine, no black has ever sought to be a member. The bylaws make no reference to race, creed, color or national origin and I have provided you a letter from the President of the club confirming that neither, *de jure,* as written down, or *de facto,* what really occurs, is there a policy of discrimination.

I have been advised that the club would welcome qualified black members and it is just a matter of time before we have black members. I suspect that it is not a matter of anything other than the economic difficulty of some people becoming members of the club. And I am sensitive to it and as I told you earlier, would actively support blacks to become members of that club.

Senator **Simon**. Senator Thurmond has some questions here. I would like to submit those in writing to you and if you could get those just as promptly as possible.

Mr. **Lake**. If they are short, could I answer them now so that we do not delay things?

Senator **Simon**. Let me try and summarize briefly here.

Mr. **Lake**. Because I have responded to two lengthy supplemental sets of written questions.

Senator **Simon**. I think the one you have gone over in your remarks. You have—really, the first three. The first three you have already answered.

Number four, there has been an allegation that Browning-Ferris Industries made secret payments to one of your partners to hire witnesses to oppose the landfill permit being sought by a competing company. Would you tell the committee if you were involved in opposing the company's permit, as well as any knowledge on your part regarding secret payments being made to your law partner to hire witnesses to oppose the permit?

Mr. **Lake**. No, sir, I was not involved in the CMI matter, which the Senator is referring to, at all. The question that you just read was the subject of a previous written question propounded to me by you and I have already answered that, but I will reiterate my answer which is, I did not work on the CMI matter at all. The first knowledge I had of the CMI matter was in July of 1981, when I read in the newspaper that a lawsuit had been filed against Browning-Ferris, making the allegations referred to in the question.

Senator **Simon**. We thank you very, very much.

Mr. **Lake**. Thank you, Mr. Chairman, for giving me the opportunity and for staying with me through the afternoon.

Senator **Simon**. The hearing stands adjourned.

[Whereupon, at 5:20 p.m., the hearing was adjourned, subject to the call of the Chair.]

FULBRIGHT & JAWORSKI

1301 McKinney Street
Houston, Texas 77010

Telephone: 713/651-5151
Telex: 76-2829

Houston
Washington, D.C.
Austin
San Antonio
Dallas
London
Zurich

August 1, 1988

VIA FEDERAL EXPRESS

Senator Strom Thurmond
SR-218 Russell Senate Office Bldg.
Washington, D.C. 20510-4001

Dear Senator Thurmond:

Enclosed are my written answers to your additional questions of July 27, 1988. I attest that these answers are given under the same oath that I swore at the Committee hearing on May 16, 1988.

I appreciate very much your prompt and thorough consideration of my nomination.

Very truly yours,

Sim Lake

SL/bma
Enclosure

cc: Senator Paul Simon (w/encl.)
[VIA FEDERAL EXPRESS]

ANSWERS TO
JULY 27, 1988, QUESTIONS FOR SIMEON T. LAKE, OF TEXAS,
TO BE UNITED STATES DISTRICT JUDGE
FOR THE SOUTHERN DISTRICT OF TEXAS

1. Mr. Lake, there have been concerns raised regarding your representation of the defendants in the case, Margaret Bean v. Southwestern Waste Management. As I understand the testimony before the Committee, plaintiffs in the case had two full judicial hearings over a five-year period on the merits of their arguments and still they lost the case. Plaintiffs appealed, and the District Court opinion was affirmed by the Fifth Circuit. It is also my understanding that complaints about certain activities of Browning-Ferris Industries, another one of your clients in the case, were also the subject of two additional court hearings. In April 1982 U.S. District Court Judge Gabrielle McDonald dismissed these complaints. Is that correct?

RESPONSE: Yes. After a lengthy preliminary injunction hearing in November of 1979 in the District Court, Judge Gabrielle McDonald denied Plaintiffs' Motion for Preliminary Injunction in the Margaret Bean case. After considerable discovery, the case was tried on the merits in July of 1984 before Judge John Singleton. The Court found no intent to discriminate on the part of the defendants and dismissed the plaintiffs' suit. The judgment of dismissal was later affirmed by the United States Court of Appeals for the Fifth Circuit. In addition to this hearing, the trial, and the appeal, the plaintiffs' complaints about the activities of Browning-Ferris Industries were also the subject of additional hearings in 1981 and 1982. Again, after these court proceedings, in April of 1982 Judge McDonald dismissed the plaintiffs' motion complaining about these activities.

Now, would you tell the Committee if there was anything improper regarding your representation of the defendants in this case?

RESPONSE: No. As I have explained to the Committee in my earlier written answers and oral testimony, there was nothing improper about my representation of the defendants in this case. The plaintiffs in this case had several full and fair hearings on all of their allegations before two different judges with considerable experience and empathy toward civil rights plaintiffs, and both of those judges ruled against the plaintiffs.

2. Mr. Lake, another issue which has been raised concerns the propriety of your releasing information about settlement negotiations to a City Councilman, who on his own disclosed the information to the media. I believe that the plaintiffs' counsel made a complaint on this matter, which was then the subject of another hearing before Judge McDonald who ultimately ruled in your favor, is that correct?

RESPONSE: Yes. In October of 1981 plaintiffs' counsel complained about my disclosure of her settlement demand to Houston City Councilman Ernest McGowen. The hearings in 1981 and 1982 referred to in my answer to Question 1 also dealt with that allegation, and the Court's order of April 1982 also dismissed this complaint.

3. Mr. Lake, there has been a great deal of discussion today alleging that your client in the Margaret Bean case had paid two people to "infiltrate" the plaintiffs' group and "sow seeds of discord" within the group. Is that allegation true?

RESPONSE: No. As I have stated in my May 15 answers (on page 1, paragraph 2) and my June 9 answers (pages 1 and 2), I understood that BFI's community relations efforts were designed to identify local community leaders and acquaint them with the Whispering Pines landfill and the facts concerning a properly run landfill and to participate in community relations activities. I was retained by BFI to defend the lawsuit filed against it. I did not become familiar with the details of BFI's community relations activities until October of 1981 when opposing counsel filed a Motion for Temporary Restraining Order and Preliminary Injunction. From reviewing the material made available to me at that time and discussing the matter with my client it remained my understanding that BFI's efforts were in acquainting local residents, and in particular local community leaders, with the facts concerning the operation of the landfill, and in participating local community activities. It was never my understanding that BFI paid anyone to "infiltrate" the plaintiffs' group or "sow seeds of discord" within that group. The July 22, 1988 letter of Howard S. Hoover, Jr., Senior Vice President and General Counsel, and Mr. Hoover's sworn testimony before the Committee on July 27 confirm what was then and is now my understanding of BFI's community relations activities.

4. Mr. Lake, there has been an allegation that Browning-Ferris Industries made "secret payments" to one of your partners to hire witnesses to oppose a landfill permit being sought by a competing company. Would you tell the Committee if you were involved in opposing the Company's permit as well as any knowledge on your part regarding "secret payments" being made to your law partner to hire witnesses to oppose the permit?

RESPONSE: I was not involved in opposing the landfill permit being sought by a competing company. I was not aware of any payments made to my law partner. In preparing my answers to the Committee's additional questions in June of this year, I investigated this allegation and learned that it had been made by the lawyer for a company suing BFI for damages concerning the CMI permit denial. I reiterate that I had no knowledge of any such payments whether secret or otherwise at the time they were allegedly made.

BOARD OF DIRECTORS

HOUSTON COUNTRY CLUB
1908

POST OFFICE BOX 22184
HOUSTON, TEXAS 77227
TELEPHONE 465-8381

JUL 20

July 7, 1988

Senator Paul Simon
United States Senate
Dirksen Senate Office Bldg., Rm. SD-462
Washington, D. C. 20510-1302

Dear Senator Simon:

As President of the Houston Country Club, I am writing to confirm that the Club has no policy, written or otherwise, that discriminates on the basis of race, sex, religion or national origin. The Club treats all applications for membership in the same respectful fashion regardless of race, sex, religion or national origin.

I trust that this letter answers your concerns about the membership practices of the Houston Country Club.

Very truly yours,

Albert E. Magill Jr.

Albert E. Magill, Jr.
President

N.A.A.C.P.
Houston Branch
4101 San Jacinto, Suite 233, Houston, TX 77004 (713) 526-3389

Officers
Alexander Green
President
Timothy Chandler
1st Vice President
Arthur McCall
2nd Vice President
Howard Jefferson
3rd Vice President
Phyllis Thibodeaux
Secretary
Limas Jefferson
Treasurer
Executive Committee Members
Edward Banks
Charlie Beathea
Deborah Brickens
Rev. L.H. Crobsy
Dr. Marion Ford
Carol Galloway
Leon Guathier
Fran Gentry
Rev. Langston Gillum
Jourshell (Bobby) Hayes
Charlene Hunter-James
Willie Isles
Clara Patrick-Jackson
Vera Jackson
Clarence Johnson
Charles Johnson
Rev. Manson Johnson
Veronica Kelly
Jim Lemond
Sharon Michael
Siv Radford
Gail Revis
Dr. Launey Roberts, Jr.
Atty. James S. Robinson
Percy Robinson
Luther Stullivan
Phyllis Thibodeaux
Ruby Rhodes Thomas
Dr. Joyce Williams
St. Rep. Ron Wilson
Bill Yabro
Lee King
Youth Advisor
Billye Davis
Youth Act-So Coordinator

August 1, 1988

The Honorable Patrick Leahy
United States Senate
Washington, D. C. 20001

Dear Sir:

With regard to the confirmation of S. T. Lake as a Federal Judge, please accept this letter as the official indication that I and the Houston Branch N.A.A.C.P. continue to maintain the position stated in our mailgram dated June 10, 1988.

A copy of said mailgram is attached hereto for your convenience.

Very truly yours,

Al Green

Al Green, President
Houston Branch N.A.A.C.P.

AG/pt

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Western Union Mailgram

4-0153865162002 06/10/88 ICS IPMBNGZ CSP HOUB
1 7135263389 MGM TDBN HOUSTON TX 06-10 1202P EST

HOUSTON BRANCH NAACP ATTN: IR
2002 WHEELER
HOUSTON TX 77004

THIS IS A CONFIRMATION COPY OF THE FOLLOWING MESSAGE:

7135263389 MGMB TDBN HOUSTON TX 134 06-10 1202P EST
ZIP
THE HONORABLE PATRICK LEAHY
UNITED STATES SENATE
WASHINGTON DC 20001
DEAR SENATOR LEAHY,

THE HOUSTON BRANCH OF THE NAACP REQUESTS THAT THE SENATE JUDICIARY COMMITTEE WITHHOLD CONFIRMATION OF ATTORNEY S.T. LAKE AS A FEDERAL JUDGE UNTIL A DETERMINATION HAS BEEN MADE AS TO WHETHER UNETHICAL, PAYOLA TACTICS WERE UTILIZED BY ATTORNEY LAKE TO CIRCUMVENT THE PLAINTIFFS LITIGATION IN THE CASE OF MARGARET DEAN ET. AL. BS. SOUTHWEST WASTE MANAGEMENT CORPORATION ET. AL. FILED IN THE SOUTHERN DISTRICT OF TEXAS.

IN THE REFERENCED CASE, ATTORNEY LAKE REPRESENTED THE DEFENDENT, WHO SPENT WHAT APPEARS TO HAVE BEEN LITERALLY THOUSAND OF DOLLARS ON A CAMPAIGN TO CREATE A PHONY, NEGATIVE, PUBLIC IMAGE OF THE PLAINTIFF. THIS APPEARS TO HAVE BEEN AN EFFORT TO WIN BY ANY MEANS NECESSARY, INCLUDING UNETHICAL ONES.

RESPECTFULLY,
AL GREEN, PRESIDENT
HOUSTON BRANCH NAACP

TO REPLY BY MAILGRAM MESSAGE, SEE REVERSE SIDE FOR WESTERN UNION'S TOLL - FREE PHONE NUMBERS

MAYOR, DAY & CALDWELL

1900 REPUBLICBANK CENTER
HOUSTON, TEXAS 77002
TWX 910-881-6917
CABLE MAYDAYHOU
(713) 225-7000

P.O. BOX [illegible]
HOUSTON, TEXAS [illegible]

July 26, 1988

Senator Joseph R. Biden, Jr., Chairman
Senate Judiciary Committee
S.R. 489 Russell Senate Office Building
Washington, D. C. 20510-0802

Dear Senator Biden:

It has come to my attention that questions have been raised regarding the ability of Mr. Sim Lake, a nominee for the federal bench in the Southern District of Texas, to act objectively and without bias with regard to issues of race and/or matters in which the participants are black or other minorities. As a Black attorney practicing in the Southern District of Texas, I would like to provide my input on this matter.

I became associated with Sim's present law firm, Fulbright & Jaworski, after graduating from Harvard Law School in June, 1984. Sim was assigned as my supervising attorney. I remained at Fulbright & Jaworski until May, 1986. During my two-year stay at Fulbright, I worked with Sim very closely on a day-to-day basis. I feel very comfortable in saying that my relationship with Sim was an extremely beneficial one and was not at all detrimentally affected or otherwise hindered by the difference in our race or cultural background. I felt that Sim dealt with me in a very objective and forthright manner. In fact, Sim recommended that I be given a "merit bonus" during my second year at the firm, even though the firm had a strict policy of reserving merit bonuses for attorneys who had reached at least their third year of practice. My decision to leave the firm at the end of my second year was in no way related to my relationship with Sim. In fact, the most difficult part of leaving the firm was severing my working relationship with him.

Based on my experience with Sim, both on a professional and a personal level, I can honestly say that I do not feel that Sim would have any difficulty ruling on the issues and the merits of the arguments placed before him without regard to the race of the participants involved. If there was ever an attorney who possessed the qualities necessary to serve in the federal judiciary, Sim Lake is such an attorney.

Very truly yours,

Alton J. Hall, Jr.

AJH:ac
AHLTR9/020

HERBERT J. HUTTON

Birth:	November 25, 1937	Philadelphia, Pennsylvania
Legal Residence:	Pennsylvania	
Marital Status:	Married	Valerie N. Russell Hutton 3 children
Education:	1955 - 1959	Lincoln University A.B. degree
	1959 - 1962	Temple University School of Law J.D. degree
Bar:	1963	Pennsylvania
Experience:	1962 - 1964	Housing and Home Finance Agency of the United States Realty Specialist
	1964 - 1969	Norris, Brown & Hall Associate
	1969 - present	Private Practitioner Philadelphia, Pennsylvania
	1982 - present	Board of Revision of Taxes and Board of Review Appeal Hearing Officer
Office:	Robinson Building, Suite 1300 N.W. Corner 15th & Chestnut Streets Philadelphia, Pennsylvania 19102 215 568-8040	
Home:	636 Burnham Road Philadelphia, Pennsylvania 19119	

To be U. S. District Judge for the Eastern District of Pennsylvania

I. BIOGRAPHICAL INFORMATION

1. Full name. HERBERT JEFFERSON HUTTON

2. Address:

Office

SUITE 1300, ROBINSON BUILDING
N.W. COR. 15th & CHESTNUT STS.
PHILADELPHIA, PENNA. 19102

Home

636 BURNHAM ROAD
PHILADELPHIA, PENNA. 19119

3. Date and place of birth.

NOVEMBER 26, 1937
PHILADELPHIA, PENNSYLVANIA

4. Marital Status (include maiden name of wife. List spouse's occupation, employer's name and business address.

MARRIED, JUNE 17, 1961

VALERIE NADINE RUSSELL
Licensed Pennsylvania Real Estate Broker

MARTIN ELFANT REALTORS
7112 GERMANTOWN AVENUE
PHILADELPHIA, PENNSYLVANIA 19119

5. Education:

LINCOLN UNIVERSITY, PENNSYLVANIA
A.B. DEGREE, 1959

TEMPLE UNIVERSITY SCHOOL OF LAW
J.D. DEGREE, 1962

6. Employment Record:

1958 to 1961	U.S. POSTAL SERVICE	MAILMAN (Part-time)
1960 to 1962	J. SUMMERS REALTY	REAL ESTATE SALESMAN (Part-time)
1959 to 1962	PHILA. PUBLIC SCHOOLS	TEACHER (SUBSTITUTE)
1962 to 1964	HOUSING & HOME FINANCE AGENCY	REALTY SPECIALIST / LAWYER
1964 to 1969	NORRIS,BROWN&HALL, ATTYS.	LAWYER
1969 to 1972	SELF-EMPLOYED IN ASSOCIATION WITH J. AUSTIN NORRIS,IRA J. K.WELLS & MANSFIELD C. NEAL	LAWYER
1972 to 1976	SELF-EMPLOYED IN ASSOCIATION WITH J. AUSTIN NORRIS & IRA J.K. WELLS	LAWYER
1977 to Present	SELF-EMPLOYED IN ASSOCIATION WITH JOHN P. SIMPKINS & LEON W. TUCKER	LAWYER
1982 to Present	CITY OF PHILADELPHIA, MEMBER OF THE BOARD OF REVISION OF TAXES & BOARD OF VIEWERS	HEARING OFFICER

7. Military Service:

NOT APPLICABLE.

8. Honors and Awards:

(a) ACADEMIC TUITION SCHOLARSHIP - LINCOLN UNIVERSITY, PENNSYLVANIA

(b) ACADEMIC TUITION SCHOLARSHIP - TEMPLE UNIVERSITY SCHOOL OF LAW

9. Bar Associations:

(a) MEMBER, THE PHILADELPHIA BAR ASSOCIATION

(b) MEMBER, BOARD OF GOVERNORS OF THE PHILADELPHIA BAR ASSOCIATION

Recipient of the Philadelphia Bar Association
Medal For Outstanding Service in 1982

(c) CHAIRMAN AND MEMBER OF THE PHILADELPHIA BAR ASSOCIATION COMMISSION ON JUDICIAL SELECTION AND RETENTION (1976 - 1982)

(d) TRUSTEE AND SECRETARY OF THE BOARD OF TRUSTEES OF THE PHILADELPHIA BAR FOUNDATION (1983 - 1984)

(e) CHAIRMAN AND MEMBER OF HEARING COMMITTEE OF THE DISCIPLINARY BOARD OF THE SUPREME COURT OF PENNSYLVANIA (1970 - 1976)

10. Other Memberships:

(a) PAST MEMBER, PHILADELPHIA TRIAL LAWYERS' ASSOCIATION

(b) PAST MEMBER, AMERICAN ARBITRATION ASSOCIATION

(c) MEMBER, PHI ALPHA DELTA LAW FRATERNITY

(d) PAST PRESIDENT AND MEMBER OF THE BOARD OF DIRECTORS OF THE PHILADELPHIA TRIBUNE CHARITIES, INC.

(e) PAST PRESIDENT AND MEMBER OF THE BOARD OF DIRECTORS OF THE PHILADELPHIA COUNCIL FOR COMMUNITY ADVANCEMENT, INC.

(f) MEMBER AND CHAIRMAN OF THE SUNDRY TRUST COMMITTEE OF THE BOARD OF CITY TRUSTS ADMINISTERING GIRARD COLLEGE, WILLS EYE HOSPITAL AND VARIOUS SUNDRY TRUSTS.

(g) TRUSTEE AND CHAIRMAN OF THE BUSINESS AFFAIRS COMMITTEE OF THE BOARD OF TRUSTEES OF LINCOLN UNIVERSITY, PENNSYLVANIA

(h) PAST MEMBER, KAPPA ALPHA PSI FRATERNITY

(i) MEMBER, SIGMA PI PHI FRATERNITY

(j) MEMBER, THE COMMISSIONERS

(k) MEMBER, NATIONAL ASSOCIATION OF GUARDSMEN, INC.

11. Court Admission:

SUPREME COURT OF PENNSYLVANIA	- 1963
COMMON PLEAS COURT OF PENNSYLVANIA	- 1963
MUNICIPAL COURT OF PHILADELPHIA	- 1963
ORPHANS' COURT OF PHILADELPHIA	- 1963
UNITED STATES SUPREME COURT	- 1982
UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA	- 196
UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT	- 197

12. Published Writings:

NOT APPLICABLE

13. Health:

— EXCELLENT

14. Judicial Office:

NOT APPLICABLE

15. Citations:

NOT APPLICABLE

16. Public Office:

I. MEMBER, BOARD OF DIRECTORS OF CITY TRUSTS, ADMINISTERING GIRARD COLLEGE, WILLS EYE HOSPITAL AND VARIOUS SUNDRY TRUSTS

Appointed for life by the Board of Judges of the Court of Common Pleas of Philadelphia County

II. MEMBER, BOARD OF REVISION OF TAXES AND BOARD OF VIEWERS OF PHILADELPHIA COUNTY

Appointed in 1982 for six year term by the Board of Judges of the Court of Common Pleas of Philadelphia County

III. COMMONWEALTH TRUSTEE OF LINCOLN UNIVERSITY, PENNSYLVANIA

Nominated by the Governor of the Commonwealth of Pennsylvania in 1986 for four year term. Confirmed by the Senate of the Commonwealth of Pennsylvania

17. **Legal Career:** a. PRECEPTEE OF REGIONAL COUNSEL AND REALTY SPECIALIST
UNITED STATES HOUSING AND HOME FINANCE AGENCY
WIDENER BUILDING, PHILADELPHIA, PENNSYLVANIA
(1962 - 1964)

ASSOCIATE OF NORRIS, GREEN, BROWN AND HALL
1510 CHESTNUT STREET, PHILADELPHIA, PENNSYLVANIA
(1964 - 1969)

SELF-EMPLOYED IN ASSOCIATION WITH ATTORNEYS J. AUSTIN NORRIS, MANSFIELD C. NEAL AND IRA J.K. WELLS,JR.
1510 CHESTNUT STREET, PHILADELPHIA, PENNSYLVANIA
(1969 - 1972)

SELF-EMPLOYED IN ASSOCIATION WITH ATTORNEYS J. AUSTIN NORRIS AND IRA J.K. WELLS, JR.
1510 CHESTNUT STREET, PHILADELPHIA, PENNSYLVANIA
(1972 - 1976)

SELF-EMPLOYED IN ASSOCIATION WITH ATTORNEYS IRA J.K. WELLS, JR., JOHN P. SIMPKINS AND LEON W. TUCKER
42 SOUTH 15th STREET, PHILADELPHIA, PENNSYLVANIA
(1977 - 1983)

SELF-EMPLOYED IN ASSOCIATION WITH ATTORNEYS JOHN P. SIMPKINS AND LEON W. TUCKER
42 SOUTH 15th STREET, PHILADELPHIA, PENNSYLVANIA
(1983 - Present)

b. 1. THE GENERAL CHARACTER OF MY LAW PRACTICE DURING THE FIRST TEN YEARS CONSISTED PRIMARILY OF THE TRIAL OF CRIMINAL MATTERS, INCLUDING HOMICIDE CASES, NEGLIGENCE MATTERS, DOMESTIC RELATIONS AND REAL ESTATE MATTERS. THEREAFTER, THE EMPHASIS SHIFTED TO THE REPRESENTATION OF CONDEMNEES IN EMINENT DOMAIN MATTERS AND THE REPRESENTATION OF BOARDS OF DIRECTORS OF SMALL BUSINESS AND NONPROFIT CORPORATIONS. IN ADDITION I HAVE ALWAYS ENJOYED A CONSTANT ESTATE PRACTICE.

2. I HAVE REPRESENTED INDIVIDUALS AND FAMILIES AS WELL AS SMALL TO MEDIUM SIZE BUSINESSES AND NONPROFIT CORPORATIONS. DURING THE SECOND DECADE OF MY PRACTICE, I DEVOTED A SIGNIFICANT PORTION OF MY TIME TO THE TRIAL OF EMINENT DOMAIN MATTERS ON BEHALF OF CONDEMNEES.

c. 1. SINCE JUNE OF 1982, I HAVE BEEN PRIVILEGED TO SERVE IN QUASI-JUDICIAL CAPACITY AS A MEMBER OF THE BOARD OF REVISION OF TAXES AND BOARD OF VIEWERS OF PHILADELPHIA, PENNSYLVANIA. SERVING IN THIS PUBLIC POSITION HAS CURTAILED THE OPPORTUNITY FOR REGULAR COURT APPEARANCES. HOWEVER, I HAVE RESPONDED TO QUESTIONS 17.c.2.. 17.c.3., 17.c.4. and 17.c.5. ON THE BASIS OF MY EXPERIENCES FROM 1963 TO 1982.

c. 2. THE PERCENTAGE OF THESE APPEARANCES ARE AS FOLLOWS:

1. FEDERAL COURTS	5%
2. STATE COURTS OF RECORD	90%
3. OTHER COURTS	5%

3. THE PERCENTAGE OF LITIGATION WAS AS FOLLOWS:

1. CIVIL	80%
2. CRIMINAL	20%

4. I WOULD ESTIMATE THAT I HAVE TRIED TO VERDICT OR JUDGMENT IN EXCESS OF 300 CASES AS ASSOCIATE COUNSEL AND IN EXCESS OF 500 CASES AS SOLE OR CHIEF COUNSEL SINCE 1963.

5. THE PERCENTAGE OF THESE TRIALS WAS AS FOLLOWS:

1. JURY	20%
2. NON-JURY	80%

18. THE TEN MOST SIGNIFICANT LITIGATED MATTERS WHICH I PERSONALLY HANDLED ARE AS FOLLOWS:

1. REDEVELOPMENT AUTHORITY OF THE CITY OF PHILADELPHIA
VS. IRWIN LIEBERMAN

(a) TRIAL COUNSEL, COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY

(b) APPELLEE COUNSEL, COMMONWEALTH COURT OF PENNSYLVANIA

(c) APPELLEE COUNSEL, SUPREME COURT OF PENNSYLVANIA (1975)

(d) TRIAL JUDGE - HONORABLE HAROLD SAYLOR

(e) FRANCIS J. MORAN, ESQUIRE - TRIAL COUNSEL AND APPELLANT COUNSEL FOR THE PHILADELPHIA REDEVELOPMENT AUTHORITY (215-546-8870)

(f) SIGNIFICANCE: CHANGED THE LAW IN THE COMMONWEALTH OF PENNSYLVANIA TO RECOGNIZE AND COMPENSATE A RESTAURANT LIQUOR LICENSE AS AN INTEREST IN REAL PROPERTY AND NOT AS A MERE FRANCHISE

(g) CITATION: 461 PA. 208, 336 A. 2d 249 (1975)

B. (CONTINUED)

2. JOHN J. DONOFLIO vs. BETHEL LIGHT, ET AL
   - (a) TRIAL COUNSEL, COURT OF COMMON PLEAS; SUPERIOR COURT OF PENNSYLVANIA 1982 - SUPERIOR COURT NO. 2292.
   - (b) TRIAL JUDGE: (1982)BERNARD J. GOODHEART (686-7916)
   - (c) JAMES J. DeMARCO, ESQUIRE, ATTORNEY FOR PLAINTIFF, (568 - 8191)
NOLAN N. ATKINSON, JR., ESQUIRE, ATTORNEY FOR ADD'L DEFT. (546-1630)
   - (d) SIGNIFICANCE: SUCCESSFUL FORMAL MOTION FOR DIRECTED VERDICT FOR DEFENDANT AFTER WEEK OF TRIAL, THEREBY AVOIDING $1 MILLION DOLLAR VERDICT AGAINST THE ADDITIONAL DEFENDANT ON THE ISSUES OF RESPONDEAT SUPERIOR, JOINT VENTURE AND FAMILY CAR DOCTRINE.

3. MARION MILLER, ADMINISTRATOR vs. ESTATE OF HELEN PESSION, ET AL
   - (a) COURT OF COMMON PLEAS OF MONTGOMERY COUNTY NO. 79 - 19233.
   - (b) TRIAL JUDGE: ANTHONY J. SCIRICA (1983) (597-2399)
   - (c) L. CARTER ANDERSON, ATTORNEY FOR DEFENDANT (875-4021)
   - (d) SIGNIFICANCE: PLAINTIFF AND DEFENDANT DID NOT SURVIVE AUTOMOBILE ACCIDENT. THERE WERE NO WITNESSES. CIRCUMSTANTIAL EVIDENCE OF NEGLIGENCE LED TO THE SETTLEMENT OF THE CASE AFTER EXTENSIVE PRE-TRIAL MEMORANDUMS AND CONFERENCES WITH THE HONORABLE ANTHONY J. SCIRICA.

4. ESTHER WILLIAMS ET AL vs. PILGRIM LIFE INSURANCE COMPANY
   - (a) COURT OF COMMON PLEAS NO. 2582 (1986)
   - (b) TRIAL JUDGE: CHARLES A. LORD (686-7042)
SUPERIOR COURT OF PENNSYLVANIA, SEPTEMBER TERM, 1986 NO. 01898 PHL86.
   - (c) JAMES J. BUCCI, ATTORNEY FOR DEFENDANT (DE.4-1444)
   - (d) SIGNIFICANCE: DOUBLE INDEMNITY CLAIM FOR ACCIDENTAL DEATH. DECEDENT FOUND ON THE PUBLIC HIGHWAY WITH FATAL GUNSHOT WOUND. NO WITNESSES PRODUCED AT TRIAL. ISSUE: CIRCUMSTANTIAL EVIDENCE AS TO CAUSE OF DEATH AND REASONABLE INFERENCES TO BE DRAWN THEREFROM TO DETERMINE LIABILITY OF DEFENDANT INSURANCE COMPANY.

5. IN RE: ESTATE OF BRIAN TO[redacted], A MINOR
NO. 34, 1982
   - (a) ORPHANS' COURT DIVISION, COURT OF COMMON PLEAS OF PHILADELPHIA
   - (b) TRIAL JUDGE: PAUL SILVERSTEIN (686-2213)
   - (c) SHARON BUTCHER WATSON, ATTORNEY FOR CLAIMANT (569-0880)
   - (d) SIGNIFICANCE: WHILE ALL PARTIES IN INTEREST ADMIT TO KNOWLEDGE OF THE RUMOR OF PARENTAGE OF THE CLAIMANT, ISSUE IS WHETHER CALIFORNIA CIVIL CODE REQUIREMENTS REGARDING CONDUCT OF PUTATIVE FATHER DURING HIS LIFETIME IS CONTROLLING.
   - (e) NOTE: THIS MATTER HAS NOT BEEN DECIDED BY THE TRIAL JUDGE AS OF THE DATE OF THIS SUBMISSION.

6 - 7. LEROY SANDERS, ET AL vs. OIC VENTURES, INC., ET AL.

I (a) TRIAL COUNSEL, U.S. DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA, CIVIL ACTION, NO. 76-2080.
(b) TRIAL JUDGE: HONORABLE HERBERT R. FOGEL.
(c) IRVING J. KATZ, ESQUIRE, ATTORNEY FOR PLAINTIFFS (564 - 1045).
(d) SIGNIFICANCE: SUCCESSFUL FORMAL MOTION FOR SUMMARY JUDGMENT, SUBSEQUENT TO COMPLETION OF DISCOVERY, AGAINST NUMEROUS AND VARIED COUNTS ALLEGING CIVIL RIGHTS VIOLATIONS.

II (a) TRIAL COUNSEL, COURT OF COMMON PLEAS OF PHILADELPHIA, FEBRUARY TERM, 1975, NO. 5213.
(b) TRIAL JUDGE: HONORABLE MATTHEW W. BULLOCK, JR.
(c) IRVING J. KATZ, ESQUIRE, ATTORNEY FOR PLAINTIFFS (564 - 1045).
(d) SIGNIFICANCE: SUCCESSFUL FORMAL MOTION FOR SUMMARY JUDGMENT SUBSEQUENT TO COMPLETION OF DISCOVERY, AGAINST ALLEGATION OF MALICIOUS PROSECUTION. NEITHER ACTION, FEDERAL OR STATE, WAS APPEALED BY COUNSEL FOR THE PLAINTIFFS.

8. COMMONWEALTH vs. WILLIAM HAYWARD.

(a) TRIAL COUNSEL, COURT OF COMMON PLEAS, CRIMINAL TRIAL DIVISION, NOVEMBER SESSIONS, 1970, NO. 1424 MURDER, NO. 1425 AGG ROBBERY, NO. 1426 CONSPIRACY.
(b) TRIAL JUDGE: JAMES T. McDERMOTT (AND A JURY).
(c) DAVID SCOTT, ESQUIRE, ASSISTANT DISTRICT ATTORNEY FOR THE COMMONWEALTH
(d) SIGNIFICANCE: ABSENT MEDICAL TESTIMONY AS PART OF THE DEFENDANT'S CASE, EXTENSIVE AND IN-DEPTH CROSS-EXAMINATION OF THE COMMONWEALTH'S MEDICAL EXPERT, MARVIN E. ARONSON, MEDICAL EXAMINER FOR THE CITY OF PHILADELPHIA, RESULTED IN HIS ADMISSION THAT THE DEATH OF THE VICTIM COULD HAVE BEEN CAUSED BY MORE THAT ONE AGENT. THIS ADMISSION RAISED "REASONABLE DOUBT" IN THE MINDS OF THE JURORS AND A VERDICT OF ACQUITTAL OF MURDER WAS RENDERED.

9. WDAS vs. CONTROL DATA CORPORATION, ET AL.

(a) TRIAL COUNSEL, U.S. DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA, CIVIL ACTION, 1973.
(b) TRIAL JUDGE: HONORABLE JOSEPH S. LORD, III, (AND A JURY).
(c) GREGORY M. HARVEY, ESQUIRE, ATTORNEY FOR DEFENDANTS (963-5427)
(d) SIGNIFICANCE: POTENTIAL PRECEDENT SETTING TORT LIABILITY CASE RESULTED IN SETTLEMENT OF THE CASE AFTER FIVE DAYS OF TRIAL FOR THE DEMANDS OF PLAINTIFF.

10. ZION NONPROFIT CHARITABLE TRUST vs. CITY OF PHILADELPHIA ET AL.

(a) TRIAL COUNSEL, COURT OF COMMON PLEAS, CIVIL ACTION-EQUITY (1980)
(b) TRIAL JUDGE: THOMAS A. WHITE (686-7658)
(c) ATTORNEYS FOR DEFENDANTS: VARIOUS ASSISTANTS OF ALAN J. DAVIS, ESQUIRE, CITY SOLICITOR
(d) SIGNIFICANCE: INITIAL RECOGNITION IN THE COMMONWEALTH OF PENNSYLVANIA OF THE APPLICABILITY OF THE DOCTRINE OF "UNITY OF TITLE AND USE" TO ENABLE EXEMPTION OF HERETOFORE CONSIDERED COMMERCIAL OFFICE SPACE WHEREIN USE IS RESTRICTED TO PUBLIC USERS AND NONPROFIT USERS BY GRANT CONDITION AND PUBLIC RECORDATION OF USE RESTRICTION.

19. Legal Activities:

AS A MEMBER OF THE BOARD OF DIRECTORS OF THE PHILADELPHIA COUNCIL FOR COMMUNITY ADVANCEMENT, INC. DURING THE PERIOD 1967 - 1977 I WAS PRIVILEGED TO VOLUNTEER MY LEGAL EXPERTISE IN THE FIELD OF MUTI-FAMILY HOUSING FINANCING TO AID IN THE DEVELOPMENT OF SEVERAL HUNDRED MIDDLE-INCOME AND SENIOR CITIZEN HOUSING UNITS. IN ADDITION AS A MEMBER OF THE BOARD OF THE COLUMIA BRANCH YMCA OF PHILADELPHIA, I WAS ACTIVE IN THE DEVELOPMENT OF THE CONSTRUCTION OF A NEW FACILITY TO SERVE THE CHILDREN IN ONE OF THE MOST DEPRESSED NEIGHBORHOODS IN PHILADELPHIA.

AS A RETAINED COUNSEL FOR NONPROFIT CORPORATIONS, I HAVE PARTICIPATED AS A CLOSING ATTORNEY FOR SENIOR CITIZEN HOUSING DEVELOPMENTS AND MIDDLE-INCOME HOUSING DEVELOPMENTS AUTHORIZED BY THE U.S. HOUSING ACT OF 1949, AS AMENDED. THESE WERE PARTICULARLY REWARDING PROJECTS PRIMARILY BECAUSE THEY WERE SPONSORED BY LOCAL CHURCHES OR SETTLEMENTS HOUSES IN THE CITY OF PHILADELPHIA.

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients, or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.

   ASSOCIATES WILL ASSUME RESPONSIBILITY FOR PENDING MATTERS WITH EXCLUSIVE RIGHTS TO ALL FEES. I SHALL NOT BE COMPENSATED IN THE FUTURE FOR ANY FINANCIAL INTEREST.

2. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.

   POTENTIAL CONFLICTS OF INTEREST ARE SELF EVIDENT. WHERE THEY EXIST, IMMEDIATE FULL DISCLOSURE TO ONE'S SUPERIOR AND ALL PARTIES IN INTEREST WITH PERSONAL RECUSAL IS THE APPROPRIATE COURSE OF CONDUCT. I HAVE NO CATEGORIES OF LITIGATION OR FINANCIAL ARRANGEMENTS THAT ARE LIKELY TO PRESENT POTENTIAL CONFLICTS-OF-INTEREST.

3. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

   NO.

4. List sources and amounts of all income received during the calender year preceding your nomination and for the current calender year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding $500 or more (If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.)

   SEE ATTACHED COPY OF REQUISITE DISCLOSURE REPORT.

5. Please complete the attached financial net worth statement in detail.

   SEE ATTACHED COPY OF FINANCIAL NET WORTH STATEMENT.

6. Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

   CO-CHAIRMAN OF THE PHILADELPHIA CAMPAIGN TO RE-ELECT GOVERNOR RICHARD THORNBURGH IN 1982. RESPONSIBLE FOR COORDINATION OF THE ACTIVITIES OF THE GOVERNOR THORNBURGH COMMITTEE SITUATE IN HARRISBURG, PENNSYLVANIA WITH THE ACTIVITIES OF REPUBLICAN CITY COMMITTEE. NO FUND RAISING RESPONSIBILITIES.

CONFIDENTIAL FINANCIAL STATEMENT

NET WORTH

ASSETS		LIABILITIES	
Cash on hand & in banks	$18,000.00	Notes payable secured	0
U.S. Govt. Securities	0	Notes unsecured	0
Listed Securities	0	Notes payable/relatives	0
Unlisted Securities	0	Notes payable/others	0
Accounts & Notes receivable:		Accounts & bills due	0
from relatives	0	Unpaid Income Tax	0
from others	0		
doubtful	0	Other unpaid tax & interest	0
Real Estate Owned	$425,000.00	Real Estate mortgages payable	$137,000.00
Real Estate Mortgages Receivable	0	Chattel mortgages and other liens payable	0
Autos & other personal property	$ 77,000.00	Other Debts	0
Cash Value - life insurance	0		
Other assets - itemize			
IRA Account	$10,000.00	TOTAL LIABILITIES	$137,000.00
IRA Account (Spouse)	$10,000.00	NET WORTH	$403,000.00
TOTAL ASSETS	$540,000.00	TOTAL LIABILITIES & NET WORTH	$540,000.00

CONTINGENT LIABILITIES		GENERAL INFORMATION	
As endorser, comaker or guarantor		Are any assets pledged ?	NO
On leases or contracts	0	Are you defendant in any suits or legal actions ?	NO
Legal Claims	0	Have you ever taken bankruptcy ?	NO
Provision for Federal Income Tax	0		
Other special debt	0		

SCHEDULE OF REAL ESTATE OWNED:

(a) 636 Burnham Road, Philadelphia, Pennsylvania Market Value: $250,000.00
(b) 404 Glen Echo Road, Philadelphia, Pennsylvania Market Value: $ 75,000.00
(c) 3145 Hidden Lake Dr.,Lake Ariel, Pennsylvania Market Value: $100,000.00

III. GENERAL (PUBLIC)

1. An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

    (a) PAST PRESIDENT AND MEMBER OF THE BOARD OF DIRECTORS OF THE PHILADELPHIA TRIBUNE CHARITIES, INC. THIS CHARITY PROVIDES "INSTANT AID" TO NEEDY PERSONS AND FAMILIES PROVIDING FOOD, CLOTHING, FUEL FUNDS, EMERGENCY CASH WHEN WELFARE FUNDS ARE DEPLETED. FURTHER, ANNUAL SCHOLARSHIP AWARDS IN AMOUNTS CONSISTENT WITH PROVISION OF CLOTHING FOR COLLEGE STUDENTS, MONEY FOR PURCHASE OF BOOKS, AND TRANSPORTATION EXPENSES. I HAVE BEEN A SUPPORTER OF THIS CHARITY FOR ABOUT TWENTY YEARS.

    (b) FOR MORE THAN A DECADE, I SERVED AS A MEMBER OF THE BOARD OF DIRECTORS OF THE COLUMBIA BRANCH YMCA WHICH IS LOCATED IN THE MOST ECONOMICALLY DEPRESSED AREA OF PHILADELPHIA,

    (c) AS A MEMBER OF THE BOARD OF DIRECTORS OF THE PHILADELPHIA COUNCIL FOR COMMUNITY ADVANCEMENT, INC., DURING THE PERIOD 1967 - 1977 I VOLUNTEERED MY LEGAL EXPERTISE IN THE FIELD OF MULTI-FAMILY HOUSING FINANCING TO AID IN THE DEVELOPMENT OF SEVERAL HUNDRED MIDDLE-INCOME AND SENIOR CITIZENS HOUSING UNITS.

    (d) SINCE 1979 I HAVE BEEN PRIVILEGED TO SERVE AS A MEMBER OF THE BOARD OF DIRECTORS OF CITY TRUSTS ADMINISTERING GIRARD COLLEGE, WILLS EYE HOSPITAL AND VARIOUS SUNDRY TRUSTS. IN THIS VOLUNTEER CAPACITY I HAVE SHARED RESPONSIBILITY FOR THE BOARDING AND EDUCATION THROUGH GRADES K - 12th OF ORPHANED BOYS AND GIRLS PURSUANT TO THE TERMS OF THE WILL OF STEPHEN GIRARD. FURTHER, WILLS EYE HOSPITAL PROVIDES FREE CARE TO ALL SEEKING ITS SERVICES WHERE THERE IS ABSENT AN ABILITY TO PAY IN ACCORDANCE WITH THE WILL OF JAMES WILL. FINALLY, AS CHAIRMAN OF THE SUNDRY TRUST COMMITTEE OF THE BOARD, I HAVE PRIMARY RESPONSIBILITY FOR THE SUPERVISION OF THE DISTRIBUTION OF THE VARIOUS TRUST FUNDS TO SCHOLARSHIP AID, NURSING HOME RESIDENTS, VISITING NURSE SOCIETIES AND "SOUP KITCHENS" THROUGHOUT THE CITY OF PHILADELPHIA.

    (e) DURING MY TENURE FROM 1982 TO 1984 AS A TRUSTEE OF THE PHILADELPHIA BAR FOUNDATION I WAS A MEMBER OF THE GRANTS COMMITTEE WHICH REVIEWED, EVALUATED AND RECOMMENDED THOSE APPLICATIONS DEEMED MOST IN NEED AND MOST NEEDED IN THE DISADVANTAGED COMMUNITY FOR FUNDING BY THE FOUNDATION. IN ADDITION, I PARTICIPATED IN ALL FUND RAISING ACTIVITIES OF THE FOUNDATION.

2. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any

organization that invidiously discriminates on the basis of race, sex, or religion. Do you currently belong, or have you belonged to any organization which discrimates -- through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What you have done to try to change these policies?

I HAVE NOT, AND DO NOT, BELONG TO AN ORGANIZATION THAT INVIDIOUSLY DISCRIMINATES ON THE BASIS OF RACE, SEX OR RELIGION. I AM A MEMBER OF CERTAIN TRADITIONALLY BLACK ORGANIZATIONS THAT DO NOT DISCRIMINATE.

3. Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, did it recommend your nomination? If so, did it recommend your nomination? Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and interviews in which you participated).

IN NOVEMBER OF 1986,THE FEDERAL JUDICIAL NOMINATING COMMISSION OF PENNSYLVANIA ADVERTISED ITS INTENT TO INTERVIEW CANDIDATES FOR THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA. PURSUANT TO THE INSTRUCTIONS, I WROTE AND REQUESTED THE PERSONAL DATA QUESTIONNAIRE FOR LAWYER APPLICANTS. SUBSEQUENT TO COMPLETION OF SAME AND SUBMISSION TO THE COMMISSION, I WAS INTERVIEWED BY THE ENTIRE COMMISSION AND ULTIMATELY ADVISED THAT I WAS AMONG THE CANDIDATES RECOMMENDED FOR CONSIDERATION BY THE UNITED STATES SENATORS OF PENNSYLVANIA. SEVERAL MONTHS ELAPSED BEFORE I WAS CONTACTED BY THE OFFICES OF THE SENATORS AND ADVISED OF MY SELECTION FOR SUBMISSION TO THE OFFICE OF THE UNITED STATES ATTORNEY GENERAL FOR CONSIDERATION AS A NOMINEE. THEREAFTER, I WAS INVITED TO THE OFFICES OF THE JUSTICE DEPARTMENT IN WASHINGTON, D.C. FOR A DAY OF INTERVIEWS WITH OFFICIALS OF THE ATTORNEY GENERAL'S STAFF. WHEN I ARRIVED IN WASHINGTON, I MET TWO OTHER LAWYER APPLICANTS WHO HAD BEEN INVITED FOR THE SAME TYPE OF INTERVIEW. FINALLY, AGAIN AFTER SEVERAL MONTHS ELAPSED, I WAS CONTACTED BY THE OFFICE OF THE ATTOREY GENERAL AND ADVISED THAT I HAD BEEN SELECTED FOR NOMINATION AND THAT I WOULD BE CONTACTED BY THE AMERICAN BAR ASSOCIATION FOR EVALUATION AND THE FEDERAL BUREAU OF INVESTIGATION FOR THE REQUISITE SECURITY INVESTIGATION.

4. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as seeking any express or implied assurances concerning your position on such case, issue, or question? If so, please explain fully.

NO.

5. Please discuss your views on the following criticism involving "judicial activism."

   (a) A tendency by the judiciary toward problem-solution rather than grievance-resolution:

   IT IS THE PROVINCE AND DUTY OF THE JUDICIARY TO SAY WHAT THE LAW IS. THOSE WHO APPLY THE RULE TO PARTICULAR CASES, MUST OF NECESSITY, EXPOUND AND INTERPRET THAT RULE TO RESOLVE THE PARTICULAR GRIEVANCE. IF THE PROBLEM CANNOT BE RESOLVED IN THIS FRAMEWORK OR PROCESS, THEN THE PROBLEM MUST BE ADDRESSED AND, HOPEFULLY, SOLVED BY THE EXECUTIVE OR LEGISLATIVE BRANCHES OF GOVERNMENT.

   (b) A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals.

   AKIN TO BEAUTY, "JUDICIAL ACTIVISM" IN THIS CONTEXT MAY BE VISIBLE TO SOME AND NOT TO OTHERS, DEPENDING ON THE SOCIAL ISSUE OR PUBLIC POLICY INVOLVED IN THE LITIGATION. THEREFORE, IT IS BEST DISPOSED OF IN APPELLATE REVIEW SOUGHT BY THE INTERESTED LITIGANT OR APPROPRIATE CLASS ACTION. WHILE SUCH ISSUES MAY ENTICE COMMENT BY THE TRIAL JUDGE, ORDERS OF THE TYPE MUST BE AVOIDED AND THE URGE TO ADVENTURE BEYOND THE IMMEDIATE INTERESTS OF THE PARTICULAR LITIGANTS OR THE SCOPE OF THE LITIGATION SHOULD BE RESISTED. LITIGANTS SEEKING TO FORGE NEW TERRITORIES SHOULD BE PREPARED TO TRY TO OBTAIN APPELATE REVIEW OR FASHION THEIR PLEADINGS INITIALLY TO PERMIT CLASS ACTION.

   (c) A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness;

   IN ALMOST TWENTY-FIVE YEARS OF PRACTICE IN THE PHILADELPHIA COMMUNITY, TO MY KNOWLEDGE, THIS TENDENCY HAS NEVER BEEN RUMORED ABOUT THE JUDGES OF THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA. IF PRIVILEGED TO SERVE, I HAVE NO DOUBT THAT SUCH A RUMOR WOULD NOT COMMENCE AS A RESULT OF MY YEARS OF SERVICE. THE REQUIREMENTS OF STANDING AND RIPENESS REQUIRE STRICT APPLICATION.

   (d) A tendency by the judiciary to impose itself upon other institutions in a manner of an administrator with continuing oversight responsibilities.

   WHILE AWARE OF CERTAIN INSTANCES WHERE THE COURT HAS DEEMED IT NECESSARY AND ADVISABLE TO ASSUME SUCH MANAGERIAL AUTHORITY, I MUST CONFESS TO A SENSE OF TREPIDATION AS TO MY COMPETENCE AS AN ADMINISTRATOR TO ASSUME SUCH A RESPONSIBILITY. THIS

5. (d) CONTINUED.

CONCERN IS BASED UPON MY EXPERIENCE AS A BOARD MEMBER OR TRUSTEE OF MAJOR INSTITUTIONS. I HAVE GREAT RESPECT FOR THE INDIVIDUALS WHO HAVE FORMALLY TRAINED, MOST TO ONE OR MORE GRADURTE DEGREE LEVELS, TO ASSUME SUCH ADMINISTRATIVE RESPONSIBILITIES. THEREFORE, AS A JURIST, I WOULD NOT ATTEMPT TO SERVE AS AN ADMINISTRATOR WITH CONTINUING OVERSIGHT RESPONSIBILITIES.

AMERICAN BAR ASSOCIATION

Standing Committee on
Federal Judiciary
1800 M Street, NW
Washington, DC 20036
(202) 331-2210

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New York, NY 10112

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NINTH CIRCUIT
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Seattle, WA 98101

Samuel L. Williams
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355 South Grand Avenue
Los Angeles, CA 90071

TENTH CIRCUIT
James A. Clark
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303 East 17th Avenue
Denver, CO 80203

ELEVENTH CIRCUIT
M. Roland Nachman, Jr.
Post Office Box 78
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James J. Bierbower
International Square
Suite 1275
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FEDERAL CIRCUIT
John D. Lane
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1666 K Street, NW
Washington, DC 20006

BOARD OF GOVERNORS LIAISON
Sharp Whitmore
2005 Gird Road
Fallbrook, CA 92028

STAFF LIAISON
Irene R. Emsellem
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1800 M Street, NW
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(202) 331-2210
ABA/NET: ABA 461

May 31, 1988

CONFIDENTIAL

The Honorable Joseph R. Biden, Jr.
Chairman, United States Senate
Committee on the Judiciary
Washington, D.C. 20510

Re: HERBERT J. HUTTON
United States District Court
for the Eastern District of Pennsylvania

Dear Senator Biden:

Thank you for affording this Committee an opportunity to express an opinion pertaining to the nomination of Herbert J. Hutton for appointment as Judge of the United States District Court for the Eastern District of Pennsylvania.

A substantial majority of our Committee is of the opinion that he is "Qualified" for this appointment. The minority found him to be Not Qualified.

Sincerely yours,

Harold R. Tyler, Jr.
Chairman

cc: All Committee Members

ROBERT P. PATTERSON, JR.

Birth:	July 11, 1923	New York, New York
Legal Residence:	New York	
Marital Status:	Married	Bevin Daly Patterson 5 children
Education:	1941 - 1942 1945 - 1947	Harvard College B.A. degree
	1945	Harvard Business School (U.S. Air Corps Statistical Control School)
	1947 - 1950	Columbia Law School LL.B. degree
Bar:	1951	New York
	1966	District of Columbia
Military Service:	1942 - 1946	U. S. Army Air Corps
Experience:	1950 - 1951	Donovan, Leisure, Newton, Lumbard & Irvine Associate
	1952 - 1953	New York State Crime Commission Assistant Counsel
	1953 - 1954 1954 - 1956	Assistant U. S. Attorney U. S. Attorney's Office Southern District of New York
	1954	U. S. Senate Committee on Banking and Currency Assistant Counsel
	1956 - present	Patterson, Belknap, Webb & Tyler Associate & Partner
Office:	30 Rockefeller Plaza New York, New York 212 698-2500	
Home:	55 East End Avenue, Apt 16H New York, New York 10028	
	200 East 66th Street, Apt 1101 (will be moving to) New York, New York 10021	
	Fair Oak Farms Cold Spring, New York 10516	

To be United States District Judge for the Southern District of New York

U.S. SENATE

QUESTIONNAIRE FOR JUDICIAL NOMINEES

I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. **Full name: (include any former names used).**

   Robert P. Patterson, Jr.

2. **Address: List current place of resident and office address(es).**

   Residence: 55 East End Avenue - Apt. 16H
   New York, NY 10028

   Office: Patterson, Belknap, Webb & Tyler
   30 Rockefeller Plaza - Suite 3500
   New York, NY 10112

3. **Date and place of birth.**

   July 11, 1923, New York City, NY

4. **Marital Status (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).**

   Married, Bevin Daly.

   Real Estate Salesperson
   Jonathan McCann & Associates
   20 East 53rd Street
   New York, NY 10022
   212-980-4610

5. **Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.**

   Harvard College B.A. Degree
   Cambridge, Massachusetts
   Sept. 1941 - April 1942 (Left for Military Service)
   Jan. 1946 - May 1947

Harvard Business School
Cambridge, Massachusetts
July - Aug. 1945
(U.S.A. Air Corps Statistical Control School)

Columbia Law School LL.B
435 West 116th Street
New York, NY 10027

Sept. 1946 - June 1950

President of Class - 1950

6. **Employment Record: List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including firms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.**

FROM	TO	EMPLOYMENT RECORD
5/56	Present	Patterson, Belknap, Webb & Tyler 30 Rockefeller Plaza New York, NY 10112
1/67	3/67	United States House of Representatives Special Committee on H.R. 1 Washington, D.C.
9/54	10/54	United States Senate Banking and Currency Committee Washington, D.C.
4/53	5/56	U.S. Attorney's Office Foley Square New York, NY 10007
1/52	4/53	New York State Crime Commission 270 Broadway New York, NY
9/50	1/52	Donovan, Leisure, Newton, Lumbard & Irvine 2 Wall Street New York, NY

7/48	9/48	Teachers Insurance of America 520 Fifth Avenue New York, NY
4/42	12/56	U.S. Army Air Force U.S., England, Africa Captain (0-670162)
7/41	9/41	Springfield Armory Springfield, MA

7. **Military Service: Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.**

Yes.

U.S. Army Air Corps - Enlisted Jan. 1942 (Private)
Inducted April 12, 1942 Air Cadet (Serial No. 11068894)
Honorable Discharge - January 22, 1946 (Captain) (Serial No. 0-670162)

Inactive

Distinguished Flying Cross with Cluster
Air Medal with Clusters

8. **Honors and Awards: List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.**

None.

9. **Bar Associations: List all bar associations, legal or judicial-related committees or conferences of which you are or have been a member and give the titles and dates of any offices which you have held in such groups.**

American Bar Association.

Member House of Delegates - 1976-80

Association of the Bar of the City of New York

Vice President - 1974-1975
Executive Committee, 1965-1970
Legal Aid Committee, 1957-1960
Committee on Admissions, 1961-1964
Committee on Law Enforcement, 1962-1963
Committee on Bill of Rights, 1964
Committee on Professional Responsibility, 1968-1971
Committee on the Judiciary, 1972-1975
Council on Criminal Justice, 1981-1985
Committee on the Second Century, 1982-1987
Committee on Legal Problems of the Homeless, Chairman, 1986-

New York State Bar Association

President, 1978-1979
President-Elect, 1977-1978
Vice President, 1975-1977
Executive Committee, 1970-1973; 1974-1980
Special Committee for Action on Court Congestion - Secretary, 1960-1961
Special Committee on Administration of Criminal Justice, 1971-1974
Committee on Association Action Program, 1975-1977
Finance Committee, 1975
Admissions, 1975-1977
Nominating Committee - 1980-1982
Bicentennial Committee, 1987-88

New York County Lawyers Association

Executive Committee, 1971-1977
Committee on Judiciary, 1970-1977
Committee on Bicentennial, 1987-88

Vera Institute of Justice, Trustee, 1981-

American Law Institute - Member

American Judicature Society - Member (Dir. 1979)

Director - Legal Aid Society, 1963-present; President, 1967-1971

Commissioner - New York State Temporary Commission on the Courts, 1970-1973

Special Hearing Officer for the Department of Justice to conduct hearings in conscientious objector matters, 1961-1968

Director and Member of Executive Committee, Lawyers' Committee for Civil Rights Under Law, 1968-

Director - Columbia Law School Alumni Association, 1958-1961

Arbitrator - American Arbitration Association, 1960-

Member - Goldman Panel on Attica Disturbance - 1971

Member - Departmental Judicial Nominating Committee, First Judicial Department, 1975-

Chairman - Prisoners' Legal Services of New York, 1976-

Member - Carey-Morgenthau Committee on Sentencing, 1978-80

Member - Senator Javits' Judicial Selection Committee, 1970-80

Member - Senator Buckley's Judicial Selection Committee, 1970-76

Member - Senator Moynihan's Judicial Selection Committee, 1976-

Member - Mayor's Police Advisory Committee on Police Management and Personnel Policy, 1985-86

Member - Advisory Board, New York University Center for Research in Crime and Justice, 1984-

Consultant - New York City Board of Correction, 1986-

10. **Other Memberships: List all organizations to which you belong that are active in lobbying before public bodies. Please list all other organizations to which you belong.**

Chairman - William T. Grant Foundation, 1980-present; Trustee - 1974-present

Trustee - Millbrook School, 1966-1978

Director - Francis Asbury Palmer Fund, 1960-present

Member - Advisory Council, United Nations Association of New York, N. Y.

Member - Executive Committee - New York Vietnam Veterans Memorial Commission, 1982-85

Trustee - New School for Social Research, 1986-

Treasurer - New School for Social Research, 1988-

Member - Rockefeller University Council, 1986-

Trustee - George Marshall Foundation, 1987-

Member - The Council on Foreign Relations

Member - The Century Association

Trustee and Vice President - The New York Farmers

Member - The Board Room, Incorporated

Member - The Owl Club

11. **Court Admission: List all courts in which you have been admitted to practice, with dates of admission and lapses if any such memberships lapsed. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.**

New York State	1951
U.S. District Court (S.D.N.Y.)	1951
U.S. District Court (E.D.N.Y.)	1965
U.S. District Court (Conn.)	1966
District of Columbia	1966
U.S. Court of Appeals (2d Cir.)	1951

12. **Published Writings: List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.**

Report Special Committee on House Resolution 1, 1967

The Record, 1970, "Legal Services for the Poor in a Period of Rising Expectations"

The Legal Aid Review, Vol. LXVII, 1970, "Our Lower Courts are Disgraceful"

The Catholic Lawyer, Summer 1970, "The Importance of The Legal Aid Society to the Legal Profession"

Report of Goldman Panel, 1973

New York State Bar Journal, 1978-79, "President's Page"

Newsday, January 15, 1982 - "New York's System for Criminal Justice Should be Revamped"

Empire State Report, May 1983 - "7 Ways to Reduce New York's Prison Population"

Britannica Book of the Year, 1986 - "Reflections on the Bernhard Goetz Case"

The New York Times, Op Ed Page, June 29, 1987, "How Prosecutors Mint New Criminals"

13. **Health: What is the present state of your health? List the date of your last physical examination.**

Good. November 1987.

14. **Judicial Office: State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.**

None.

15. **Citations: If you are or have been a judge, provide: (1) citations for the ten most significant opinions you have written; (2) a short summary of and citations for all appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings; and (3) citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, please provide copies of the opinions.**

    Not applicable.

16. **Pubic Office: State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.**

    Member, Philipstown Industrial Development Agency, 1980-

17. **Legal Career:**

    a. **Describe chronologically your law practice and experience after graduation from law school, including:**

        1. **whether you served as clerk to a judge, and if so, the name of the judge, the court, and the dates of the period you were a clerk;**

            No.

        2. **whether you practiced alone, and if so, the addresses and dates;**

            No.

        3. **the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each.**

            See Answer to Item 6.

b. 1. What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?

From 1950 to early 1952 I was an associate with Donovan, Leisure, Newton, Lumbard & Irvine, 2 Wall Street, New York, NY.

In early 1952, I became an Assistant Counsel - New York State Crime Commission, 270 Broadway, New York, to Chief Counsel John M. Harlan, Esq. I worked on the Waterfront Investigation - interrogated certain witnesses at the public hearings under Chief Counsel Theodore Kiendel, Esq. I also drafted some of the Commission's proposed remedial legislation. In 1953, I became an Assistant U.S. Attorney in the Southern District of New York, 60 Centre Street, New York City, under U.S. Attorney J. Edward Lumbard. I was placed in charge of approximately 800 pending narcotics prosecutions and a special investigative unit of agents from various enforcement groups. A major part of my service was in arraignments and grand jury investigations resulting in the indictments of a number of organized crime figures. I also tried to verdict about ten jury trials of varying importance.

In 1955, I was detached for several months to assist the Senate Banking and Currency Committee as Assistant Counsel to investigate Title 1 Housing projects in New York City. After hearings in Washington, I returned to the U.S. Attorney's Office.

In 1956, I left to become associated with Patterson, Belknap and Webb as a litigation associate. Clients included ordinary commercial clients, as well as IBM World Trade in foreign war claims settlement matters, H. C. Cook Company in defending against claims of unfair competition, and patent and trademark infringement, and the Republic of China in its effort to recover its funds from former officials. In 1960, I became a partner in Patterson, Belknap and Webb and, in 1961, became the partner responsible for advice to Panhandle Eastern Pipeline Company, and its subsidiaries, Trunkline Gas Company and Anadarko Production Company. These services included counselling with the Chief Executive

Officer, review and revision of briefs before the Federal Power Commission and the United States Circuit Court of Appeals in Washington, D.C., and various other matters often involving legal advice in antitrust.

In 1967, I served as counsel to the Minority on the Select Committee of the House of Representatives pursuant to HR 1. I was the primary author and responsible for the legal research in the report of that Committee concerning Adam Clayton Powell, Jr. That year, Panhandle Eastern moved its main office to Houston, Texas, and my practice changed to become more general. I rendered corporate and personal advice and also litigated cases. The lawsuits were principally in the District Court for the Southern District of New York, and New York State Supreme Court, New York County. I represented executives in the grand jury investigation involving the National Student Marketing Company and ensuing civil litigation. I supervised the defense of clients in two criminal securities trials (Hercules Galion and Stirling Homex), defended outside director or corporate clients in stockholder derivative actions involving Piper Aircraft Corporation, American Home Products, International Harvester and Reynolds Tobacco, defended an executive in the Four Seasons Nursing litigation, and handled some commercial cases. In 1979 and 1980, I was partner in charge of the defense of the many cases brought against the National Iranian Oil Company during the hostage crisis. More recently, my work has included representation or advice to law firms, such as Rosenman & Colin, Greenbaum, Wolf & Ernst, Bernstein, Carter & Deyo, and Reid & Priest, as well as representation of the Independent Directors Committee of Maxxam Group Inc. during merger negotiations with MCO Holdings, Inc. and subsequent litigation still pending. During my career, I have handled divorce cases for clients of the firm and done trust and estates work. Beginning in 1978, I successfully litigated, on behalf of the Retirement Board of the Employees' Retirement Plan of the W. T. Grant Company, a class action against the members of the retirement plan, fixing the pension rights of the various class of members of the plan. My semi-judicial service includes acting as Special Master in Flateau v. Anderson, et al. which resulted in the redistricting of Congressional, Senate and Assembly Districts after the 1980 census, and as an arbitrator for the American Arbitration Association.

2. **Describe your typical former clients, and mention the areas, if any, in which you have specialized.**

See above.

c. 1. **Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates.**

Occasionally.

2. **What percentage of these appearances was in:**

(a) federal courts;	**70%**
(b) state courts of record;	**20%**
(c) other courts.	**5%**

3. **What percentage of your litigation was:**

(a) civil;	70%
(b) criminal.	30%

4. **State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel**

15 to 20 sole or chief counsel.

5. **What percentage of these trials was:**

(a) jury;	**60%**
(b) non-jury.	**40%**

18. **Litigation: Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:**

(a) the date of representation;
(b) the name of the court and the name of the judge or judges before whom the case was litigated; and
(c) the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

1. United States of America v. Giacomo Reina, Joseph Valachi, Pasquale Moccio, Pasquale Pagano, Larry Quartiero, et al.

Prosecution of a major conspiracy case involving significant organized crime defendants charged with the importation and distribution of heroin. I was sole prosecutor in the trial of this case, which resulted in the conviction of all defendants.

The case was tried before Hon. Alexander Bicks in the Southern District of New York from February 29 to March 21, 1956.

Defendants' counsel were:

Menahem Stim
Curran & Stim
New York, NY

Michael P. Direnzo, Esq.
New York, NY

Vincent J. Velella, Esq.
5 Beekman Street
New York , NY

On appeal, the conviction of Mr. Valachi was reversed (242 F.2d 302 (1956))

2. U.S.A. v. Roger Coudert and Antonio Farina, Crim. No. C143/238

Prosecution of major heroin couriers resulting in convictions of both defendants. I was sole prosecutor for the United States of America. The case was tried before Hon. Vincent J. Leibell from March 15 to March 23, 1954.

Defense counsel were:

Henry Chapman, Esq.
291 Broadway
New York, NY

Abraham Solomon, Esq.
81 Baxter Street
New York, NY

On appeal the convictions were upheld (218 F.2d 62 (1954)).

3. U.S.A. v. Certain Lands in Suffolk County, State of New York and Sungic Land Company, Inc., et al. (65-CD-1025)

This was a 2-3 week condemnation suit tried in the Eastern District of New York in May of 1967 before a jury and Hon. Joseph C. Zavatt, Chief Judge. I believe the award was the highest per acre award in the Fire Island condemnation cases. I was sole trial counsel for the defendant Sungic Land Company, Inc.

Counsel for the United States of America was Asst. U.S. Attorney Peter H. Ruvulo, Esq. (Joseph P. Hoey, Esq. - U.S. Attorney.)

4. IBM World Trade Corporation v. Government of Czechoslovakia, CZ-4647

In November 1959, acting on behalf of IBM World Trade Corporation, I was principal attorney in presenting its claim to the Foreign Claims Settlement Commission of the United States, Washington, D.C. for compensation for bank accounts seized in Czechoslovakia before World War II. The Commission found that bank accounts constituted property within the meaning of the Act as I had briefed and argued. The Foreign Claims Settlement Commission subsequently took the opposite position in settling its claims involving other countries. I did not participate in those litigations.

Other Counsel:

Nicholas Doman, Esq.,
New York, NY

5. Missionaries & Ministers Benefit Board of the American Baptist Convention v. McKay, et al., Index No. 11285/68

I acted for plaintiff in this short trial of a declaratory judgment action before Hon. Matthew M. Levy in New York State Supreme Court, New York County. The court's lengthy opinion upheld the claim of the plaintiffs that defendant did not have a right to a pro-rata share of the bequest left to the plaintiff by Maude S. McKay.

Other counsel involved were:

Louis A. Rossano, Esq.
100 East Old Country Road
Mineola, N.Y.

Louis J. Lefkowitz, Esq.
Attorney General
State of New York
By Palmer B. Wald, Esq.,
Assistant Attorney General

Samuel B. Colman, Esq.
2 West 89th Street
New York, NY

6. U.S.A. v. Jack L. Clark, et al., 72 Cr. 1356

This was a prosecution of the principals of Four Seasons Nursing Homes, Inc. and their accountants for mail fraud and violation of the federal securities laws. The litigation was assigned to Hon. Thomas P. Griesa in the United States District Court, Southern District of New York. I was sole counsel for defendant Tom J. Gray. Judge Griesa granted defendants' motion for a change of venue to Oklahoma, 360 F.Supp. 936 (1973). By writ of mandamus to the United States Court of Appeals (Second Circuit), the United States Attorney sought review of Judge Griesa's decision. Peter Fleming, Esq. and I divided our argument before the Court of Appeals in July 1973. He argued based on the facts below; I argued based on legal precedent. Judge Griesa's decision was affirmed per curiam by a divided court (481 F.2d 276 (1973)) (Circuit Judges Hays, Smith and Timbers, dissenting).

Opposing counsel:

U.S. Attorney Whitney North Seymour, Jr.,
Assistant U.S. Attorneys Gary F. Naftalis and John Nields, etc.

Counsel for other defendants:

Peter Fleming, Esq. and John Sprizzo, Esq.
Curtis, Mallet & Prevost
100 Wall Street
New York, NY
212-248-8111

Michael R. Klein, Esq.
Arthur Matthews, Esq.
Wilmer, Cutler & Pickering
900 17th Street, N.W.
Washington, D.C. 20006

Ralph Wienscheink, New York
10 East 40th Street
New York, NY 10016
212-679-3760

Hazard Gillespie, Esq. attended the argument in the Court of Appeals

7. U.S.A. v. Irving Projansky, et al., 67 Cr. 728

I was sole counsel for defendant Gerald Leavitt in this prosecution for mail fraud and violation of the federal securities laws. The trial began on March 1, 1971 and ended on June 5, 1971 before Hon. Morris E. Lasker. Mr. Leavitt was convicted, but received a suspended sentence.

Other defense counsel were:

Moses S. Kove, Esq.

John S. Martin, Jr., Esq.
Now with: Schulte Roth & McGoldrick

Jerome J. Londin, Esq.

Arnold Bauman, Esq.
Now with: Shearman & Sterling
53 Wall Street
New York, NY 10005

Arnold I. Burns, Esq.
Now with: U.S. Department of Justice
Washington, D.C.

Malcolm H. Bell, Esq.

Joseph E. Brill, Esq. - deceased.

Prosecutors were:

Assistant U.S. Attorneys Gary F. Naftalis,
John J. Tigue, Jr., Paul R. Grand

8. I was partner in charge of representing the National Iranian Oil Company in the numerous cases filed against it in 1979 in the Southern District of New York. The original case was brought by Reading & Bates Corporation and filed before the hostages were taken. A temporary restraining order was issued freezing the substantial bank accounts of the National Iranian Oil Company. Upon motion papers prepared by me and oral argument by Thomas G. Shack, Jr., Esq. of Abourezk, Shack & Mendenhall, Washington, D.C., that order was dissolved and plaintiff's motion for prejudgment attachment was denied by Hon. Kevin Duffy.

Opposing counsel:

Lawrence W. Newman, Esq.
Baker & McKenzie
805 Third Avenue
New York, NY 10022
212-751-5700

Thereafter, all Iranian assets were frozen by Presidential order and many suits were filed and prejudgment attachment orders granted. After the Algerian Accord between the United States and the Government of Iran, the validity of that settlement was briefed and argued in the District Court (Hon. Kevin Duffy), U.S. Court of Appeals (2d Cir.), and the United States Supreme Court. I was the principal author of the briefs filed on behalf of the National Iranian Oil Company.

Co-Counsel included:

Richard Gaines, Esq.
Fenwick, Stone, Davis & West
488 Madison Avenue
New York, NY 10022
212-754-3000

Elihu Inselbuch, Esq.
Gilbert, Segall & Young
430 Park Avenue
New York, NY 10022
212-644-4000

Roger Hunting, Esq.
Greenbaum, Wolff & Ernst
437 Madison Avenue
New York, NY 10020
212-758-4010

Daniel P. Levitt, Esq.
Kramer, Levin, Nessen, Kamin & Soll
919 Third Avenue
New York, NY 10022
212-715-9100

Leonard B. Boudin, Esq.
Rabinowitz, Boudin, Standard,
Krinsky & Lieberman
30 East 42nd Street
New York, NY 10017
212-697-8640

Thomas G. Shack, Jr., Esq.
Abourezk, Shack & Mendenhall, P.C.
Suite 500
1129 Twentieth Street, N.W.
Washington, D.C. 20036
202-293-5900

Paul O'Dwyer, Esq.
O'Dwyer & Bernstien
99 Wall Street
New York, NY
212-269-3939

Other opposing counsel included:

Robert S. Anderson, Esq.
Powell Pierpoint, Esq.
Hughes, Hubbard & Reed
One Wall Street
New York, NY 10005
212-WH3-6500

David R. Hyde, Esq.
Cahill, Gordon & Reindel
80 Pine Street
New York, NY 10005
212-825-0100

Charles W. Sullivan, Esq.
Edwards & Angell
680 Fifth Avenue
New York, NY 10019
212-308-4411

Vicki E. Land, Esq.
O'Melveny & Myers
611 West 6th Street
Los Angeles, California 90017
213-620-1120

James Schreiber, Esq.
Schreiber, Klink, Schreiber,
Lehnardt & Carney
733 Third Avenue
New York, NY 10017
212-687-8550

Robert B. McKay, Esq.
Santora, Shenkman & Kushel
521 Fifth Avenue
New York, NY 10017
212-867-5050

P. B. Konrad Knake, Esq.
White & Case
14 Wall Street
New York, NY 10005
212-732-1040

John E. Hoffman, Jr., Esq.
Shearman & Sterling
53 Wall Street
New York, NY 10005
212-483-1000

Donald Eng, Esq.
Dechert, Price & Rhoads
11 Broadway
New York, NY 10004
212-425-3510

Edward J. Reilly, Esq.
Milbank, Tweed, Hadley & McCloy
One Chase Manhattan Plaza
New York, NY 10005
212-530-5000

Rosenman Colin Freund Lewis
& Cohen
575 Madison Avenue
New York, NY 10022
212-940-8800

9. U.S.A. v. David Stirling, et al., 76 CR 685

This was a prosecution of executives of Stirling Homex, Inc. and others for mail fraud and violation of federal securities laws in the United States District Court, Southern District of New York before Hon. Marvin E. Frankel. The trial commenced on December 22, 1976 and ended January 29, 1977. I supervised the defense for Rubel Phillips and examined and cross-examined some witnesses, but my associate, Michael B. Mukasey, opened and closed to the jury and carried the bulk of the trial.

Other defense counsel included:

Albert J. Gaynor, Esq.
202 Mamaroneck Avenue
White Plains, NY
914-761-2399

Sidney Feldshuh, Esq.
919 Third Avenue
New York, NY 10022

Douglas F. Eaton
745 Fifth Avenue
New York, NY 10022

Prosecution attorneys were:

Assistant U.S. Attorneys W. Cullen MacDonald,
Angus MacBeth

10. Plateau v. Anderson, et al., 82 Civ. 0876

This case was brought by the Black and Puerto Rican caucus against the state officials in the State of New York for failure to redistrict New York State's Congressional, Senate and Assembly districts to conform with the results of the 1980 census. I was appointed by a three-judge court, Circuit Judge Lawrence R. Pierce, District Judges Broderick and Ward, as Special Master to develop a redistricting plan as an *in terrorem* alternative to possible state inaction. In addition to developing a redistricting plan and reporting on the legality thereof, I conducted a hearing for the Court in connection with proposed districts in Queens, Yonkers and Rochester and reported thereon to the Court.

Other Counsel were:

Robert F. Kelly, Esq.
Legislative Advisory Task Force
on Reapportionment
250 Broadway
New York, New York 10009
212-587-4222

C. Daniel Chill, Esq.
Counsel for plaintiff Stanley
Fink
Quint, Marx, Chill & Greene
295 Madison Avenue
New York, NY 10017
212-685-6100

Cesar Perales, Esq.
Lizette A. Cantres, Esq.
Puerto Rican Legal Defense
Fund, Inc.
95 Madison Avenue
New York, NY 10016
212-532-8470

Martin E. Conner, Esq.
Counsel for Plaintiff-Intervenor
Manfred Ohrenstein
61 Pierrepont Street
Brooklyn, NY 11201
718-875-1010

George Zuckerman, Esq.
Counsel for the Defendants
Hugh Carey, the State Board
of Election and Mario Cuomo
Attorneys General's Office
Two World Trade Center
New York, NY 10047
212-488-3385

Alan Rothstein, Esq.
Citizens Union
198 Broadway
New York, NY 10038
212-227-0342

Richard Emery, Esq.
Arthur Eisenberg, Esq.
New York Civil Liberties Union
84 Fifth Avenue
New York, NY 10011
212-924-7800

Nathan Lewin, Esq.
Miller, Cassidy, Larroca & Lewin
2555 M Street, N.W.
Washington, D.C. 20037
202-293-6400

Harry R. Pollak, Esq.
Attorney for Shirley Chisolm
and Vander L. Beatty
299 Broadway
New York, NY 10007
212-233-0386

Agostinho Dias Reis, Esq.
Attorney for Armando Montano, et al.
225 Broadway
New York, NY 10007
212-964-4000

Paul Wooten, Esq.
Counsel for plaintiffs Flateau,
Connelly, Bynoe and Rodriguez
1360 Fulton Street
Brooklyn, NY 11216
718-488-7784 or 4831

John F. Haggerty, Esq.
Counsel for defendants Warren
Anderson, Jay Rolison, Jr.
and the Senate of the State
of New York
500 Fifth Avenue
New York, NY 10110
212-391-1877
518-455-2536

William J. Hibsher, Esq.
Asst. United States Attorney
Southern District of New York
One St. Andrew's Plaza
New York, NY 10007
212-791-1969

Richard S. Scolaro, Esq.
Scolaro, Shulman & Cohen
One Lincoln Center
Syracuse, NY 13202
315-471-8111

19. **Legal Activities: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation in this question. Please omit any information protected by the attorney-client privilege (unless the privilege has been waived).**

Special Master in 1982 redistricting case in New York. Plateau v. Anderson, et al., 82 Civ. 0876. See Question 18, Item 10.

Special counsel to Independent Directors - Maxxam Group MCO Holdings Merger - Advice in connection with multiple merger negotiations and supervision of ensuing litigation 1986-1988

Chief of Prosecutions and Narcotics Investigations in U.S. Attorney's Office, Southern District of the New York, 1953-56

Representation of Malcolm Bell resulting in several investigations for lack of prosecution of crimesby persons involved in the Attica disturbance.

Counsel to Minority in Adam Clayton Powell investigation - principal author of report, 1967.

Counsel for National Iranian Oil Company in cases in New York City in 1979-81.

Commissioner New York State Temporary Commission on Courts, 1970-1973. Member of Commission which developed court reform proposals for New York State Courts.

Organizer of implementation committee "Court Reform Now" 1977.

President - The Legal Aid Society, 1967-1971. Presided over 500% growth of Society and negotiated restructuring of lower criminal courts in New York City.

Member Goldman Panel which reported and made recommendations with respect to aftermath of Attica Disturbance, 1971-1973.

Chairman of Prisoners' Legal Services of New York from inception in 1976 to present, in which period it has become an accepted and respected legal institution in New York State.

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. **List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients, or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.**

   Patterson, Belknap, Webb & Tyler Partnership Interest and severance agreement to be negotiated.

2. **Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.**

   I expect to recuse myself in connection with cases in which any party is represented by Patterson, Belknap, Webb & Tyler, Prisoners' Legal Services of New York or The Legal Aid Society for a period of some months.

3. **Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? if so, explain.**

   I have no commitments or agreements, but I would like to continue as trustee of several not-for-profit and educational institutions on which I now serve which are seldom, if ever, engaged in litigation.

4. **List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding $500 or more. (If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.)**

   See Financial Disclosure Form and attachments for all income other than that received from Patterson, Belknap, Webb & Tyler.

5. **Please complete the attached financial net worth statement in detail. (Add schedules as called for.)**

Copy attached.

6. **Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.**

Veterans' Chairman- New York State Citizens for Eisenhower-1956

Secretary - National Citizens for Eisenhower-1958;

Chairman - National Citizens for Eisenhower-1959-60

Organizer - Citizens Committee for Samuel R. Pierce, Jr. - 1959-1960

Organizer - Citizens Committee for Whitney N. Seymour, Jr. - 1958

Chairman - New Yorkers for Scranton - 1964

Organizer - "Court Reform Now" 1977

III. GENERAL (PUBLIC)

1. **An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.**

The Legal Aid Society, President, 1967-1971; Member of the Board for 25 years, 1963 to present

Prisoners' Legal Services of New York, Chairman from inception in 1976 to present.

Association of the Bar of the City of New York Chairman - Committee on The Legal Problems of the Homeless, 1986 to present

Vera Institute of Justice - Trustee, 1981 to present.

New York Vietnam Veterans Memorial Commission, Co-Chairman - Committee on Living Memorial. Development of program for hard-core unemployed veterans, 1983 to present.

Representation at no fee of Hon. Albert McDowell in Judicial Disciplinary and Removal Proceedings.

Handled various cases over years for persons who could not pay fees.

2. **The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion. Do you currently**

belong, or have you belonged, to any organization which discriminates -- through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What have you done to try to change these policies?

Century Association, New York, NY, 1968-present. This private organization has Black and Jewish and Oriental members. It has been a club for males for over 100 years. In recent years, the Club has been the subject of discrimination claims by women. Under these circumstances, some women litigants and attorneys might perceive potential bias. In my judgment I should take action to dispel any such perceptions. Accordingly, the President, having nominated me, I have tendered my resignation.

Owl Club, Cambridge, Massachusetts, 1946-present. When I joined this private club, it was composed of male students, since at that time Harvard had only male students. I am a life member and have had nothing to do with it for 40 years.

New York Farmers, New York, N.Y., 1984-present. It has no women members or Black members, but I have no idea whether this 50-60 member organization, which seems altogether social and supports scholarships at agricultural institutions, acts to invidiously discriminate.

3. **Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, did it recommend your nomination? Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and interviews in which you participated).**

Yes, there is a selection commission in my jurisdiction to recommend candidates for nomination to the federal courts.

It did recommend my nomination.

I am a member of Senator Moynihan's Committee on the Judiciary. After our review at a meeting of a number of interviewed candidates for the District Court, the Chairman, during a recess, asked me if I would consider being appointed. I told him I could not say yes, and he suggested I think about it. After discussion with my wife that evening, I called him the next day, told him of my reservations, but allowed him to suggest my name to the Committee. A few days later, I was called by Senator Moynihan. I then was interviewed by Mr. Markman and two other lawyers in the Office of Legal Policy, U.S. Department of Justice.

4. **Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as seeking any express or implied assurances concerning your position on such case, issue, or question? If so, please explain fully.**

Not any specific case, but I did discuss, among other matters, judicial restraint, the death penalty, and the right of privacy with the attorneys at the Office of Legal Policy.

5. **Please discuss your views on the following criticism involving "judicial activism."**

The role of the Federal judiciary within the Federal government, and within society generally, has become the subject of increasing controversy in recent years. It has become the target of both popular and academic criticism that alleges that the judicial branch has usurped many of the prerogatives of other branches and levels of government.

Some of the characteristics of this "judicial activism" have been said to include

- a. **A tendency by the judiciary toward problem-solution rather than grievance-resolution;**
- b. **A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;**
- c. **A tendency by the judiciary to impose broad, affirmative duties upon governments and society;**
- d. **A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and**
- e. **A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.**

There is no doubt the role of the Federal judiciary has been the subject of increasing controversy within the Federal government, and with society generally, in recent years. Part of the criticism is related to the media's emphasis on crime in our society and the claim the judiciary is 'soft on crime.' In most instances, this criticism has been unwarranted. Other criticism relates to judicial activism. In my view this criticism has also been largely unwarranted. Most judges are aware of the fact that their powers are of limited effectiveness and aware of the difficulty, if not impossibility, of effecting more than a grievance resolution of disputes between the parties.

I do not believe the judiciary is responsible for employing plaintiffs to impose far-reaching orders. The class action legislation has permitted attorneys to seek this relief and requires judges to impose it if the relief requested is warranted.

The judiciary generally, and district judges certainly, are not in a position to impose broad affirmative duties upon governments and society.

I have not noticed a tendency in the judiciary toward loosening jurisdictional requirements, such as standing and ripeness.

I also do not believe there is a tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities. I do recognize that in a limited number of cases, judges have taken action leading to that result. In general those judges have reluctantly found that a significant number of citizens of the United States are not being afforded their constitutional rights due to long-standing disregard of those rights by the institutions involved. If the damages to those citizens are significant, I fail to see what other course of action should be followed.

AFFIDAVIT

I, ROBERT P. PATTERSON, JR., do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

June 1, 1998
(DATE)

(NAME)

Kathleen Howley
(NOTARY)

KATHLEEN HOWLEY
Notary Public, State of New York
No. 31-4769122
Qualified in New York County
Commission Expires June 30, 1920

FINANCIAL STATEMENT

NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household. Robert P + Bennd Patterson

ASSETS			
Cash on hand and in banks EST	1	000	—
U.S. Government securities—add schedule			
Listed securities—add schedule A+B	504	000	
Unlisted securities—add schedule C	350	000	
Accounts and notes receivable:			
Due from relatives and friends		0	0
Due from others		0	0
Doubtful		0	0
Real estate owned—add schedule D	3,000	000	
Real estate mortgages receivable		0	0
Autos and other personal property EST	20	000	—
Cash value—life insurance —EST	50	000	
Other assets—itemize:			
IRA Accounts	17	000	—
Partnership Interest	81	000	
Profit Sharing (Keogh		→	
Plan) deferred income	457	000	—
Total assets	4,480	000	

LIABILITIES			
Coop Loan Notes payable to banks—secured —	120	000	—
Notes payable to banks—unsecured		0	0
Notes payable to relatives		0	0
Notes payable to others PBW+T	13	238	78
Accounts and bills due		0	0
Unpaid income tax		0	0
Other unpaid tax and interest		0	0
Real estate mortgages payable—add schedule		0	0
Chattel mortgages and other liens payable		0	0
Other debts—itemize:			
Monthly Expenses (EST)	2	400	—
Insurance Policy Loan			
(EST)	37	000	
Total liabilities	172	338	78
Net worth	4,307	261	22
Total liabilities and net worth	4480	000	00

CONTINGENT LIABILITIES			
As endorser, comaker or guarantor		0	0
On leases or contracts		0	0
Legal Claims		0	0
Provision for Federal Income Tax		0	0
Other special debt		0	0

GENERAL INFORMATION		
Are any assets pledged? (Add schedule.) No. Except Coop Loan		
Are you defendant in any suits or legal actions? No		
Have you ever taken bankruptcy? No		

WEISS, PECK & GREER
INVESTMENTS

ONE NEW YORK PLAZA
NEW YORK 10004
(212) 908-9500

member
New York Stock Exchange, Inc.
American Stock Exchange, Inc.
and other principal exchanges.

SIPC
SECURITIES INVESTOR PROTECTION CORPORATION

INVESTMENT MANAGER

COURTESY OF M. KIMELMAN & CO.

CUSTOMER ACCOUNT NO.
047 035506 001

ROBERT P. PATTERSON JR.
ROOM 3500
30 ROCKEFELLER PLAZA
NEW YORK, NY 10112

STATEMENT PERIOD	FINANCIAL SUMMARY		YTD INCOME SUMMARY
BEGINNING 03-26-88	NET OPENING MONEY BALANCE	NET CLOSING MONEY BALANCE	DIVIDENDS
ENDING 04-29-88	SHORT ACCOUNT OPENING	SHORT ACCOUNT CLOSING	TAXABLE INTEREST
SOC SEC I.D. NO. 119-24-7984	PORTFOLIO VALUE 145,112.50	MONEY MKT FUND 12,110.77	MUNICIPAL BOND INTEREST 3,609.37
PAGE NO 1 OF 1	MUTUAL FUND AT CUSTODIAN	ACCOUNT VALUE 157,223.27	MARGIN INTEREST -

DATE	BOUGHT RECEIVED OR LONG	SOLD DELIVERED OR SHORT	DESCRIPTION	Ticker Symbol	TYPE	PRICE OR ENTRY	AMOUNT CHARGED	AMOUNT CREDITED
			* * * ACTIVITY FOR THIS PERIOD * * *					
04-22-88			FUNDS HIRED FIDUCIARY		1	CHK	40000.00	
04-25-88			EMP TAX FREE RED		1	MMF		40000.00
			* * * POSITIONS * * *			MKT PRICE * * *	PORTFOLIO VALUES * * *	
	50000		MUNICIPAL ASST CORP FOR CITY NEW YORK N Y 7.50% 2-1-95 SER EE CALL 8-1-87 @ 102		1	102	51000.00	
	25000		MUNICIPAL ASSISTANCE CORP FOR CITY N Y NY 6.875% 7-1-2007 REGD SER 61 DD 1-1-87 FC 7-1-87 CALL 7-1-97 @ 102		1	87 5/8	21906.25	
	25000		NEW YORK N Y SER C 7.00% 2-1-2001 REGD DD 12-1-86FC 2-1-87		1	93.203	23300.75	
	25000		ONONDAGA CNTY N Y 8.00% 12-15-96 CALL 12-15-89@101.75 CALL 12-15-90 @101.5		1	103.582	25895.50	
	25000		SUFFOLK CNTY N Y AUTH WTRWKS REV 6.30% 6-1-2000 REGD REF SER N DD 11-1-86FC 6-1-87 CALL 6-1-96 @ 102		1	92.040	23010.00	

YOUR MONEY MARKET FUND INCL DIV REINVEST
BALANCE AS OF 04/28/1988 IS - - - - $12,110.77

WEISS, PECK & GREER
INVESTMENTS

ONE NEW YORK PLAZA
NEW YORK 10004
(212) 908-9500

Member
New York Stock Exchange, Inc.
American Stock Exchange, Inc.
and other principal exchanges.

SIPC
SECURITIES INVESTOR PROTECTION CORPORATION

COURTESY OF M. KIMELMAN & CO.

INVESTMENT MANAGER

CUSTOMER ACCOUNT NO.
067 035506 001

ROBERT P. PATTERSON JR.
ROOM 3500
30 ROCKEFELLER PLAZA
NEW YORK, NY 10112

STATEMENT PERIOD	FINANCIAL SUMMARY		YTD INCOME SUMMARY
BEGINNING 03-26-88	NET OPENING MONEY BALANCE	NET CLOSING MONEY BALANCE	DIVIDENDS
ENDING 04-29-88	SHORT ACCOUNT OPENING	SHORT ACCOUNT CLOSING	BOND INTEREST
SOC SEC OR ID NO 119-24-7984	PORTFOLIO VALUE 145,112.50	MONEY MARKET FUND 12,110.77	MUNICIPAL BOND INTEREST 3,609.37
PAGE NO 1 OF 1	MUTUAL FUND AT CUSTODIAN	ACCOUNT VALUE 157,223.27	MARGIN INTEREST

DATE	BOUGHT RECEIVED OR LONG	SOLD DELIVERED OR SHORT	DESCRIPTION	Ticket Symbol	TYPE	PRICE OR ENTRY	AMOUNT CHARGED	AMOUNT CREDITED
			* * * ACTIVITY FOR THIS PERIOD * * *					
04-22-88			FUNDS WIRED FIDUCIARY		1	CHK	40000.00	
04-25-88			EMP TAX FREE RED		1	MMF		40000.00
			* * * POSITIONS * * *			MKT PRICE * * *	PORTFOLIO VALUES * * *	
	50000		MUNICIPAL ASST CORP FOR CITY NEW YORK N Y 7.50% 2-1-95 SER EE CALL 8-1-87 @ 102		1	102	51000.00	
	25000		MUNICIPAL ASSISTANCE CORP FOR CITY N Y NY 6.875% 7-1-2007 REGD SER 61 DD 1-1-87 FC 7-1-87 CALL 7-1-97 @ 102		1	87 5/8	21906.25	
	25000		NEW YORK N Y SER C 7.00% 2-1-2001 REGD DD 12-1-86FC 2-1-87		1	93.203	23300.75	
	25000		ONONDAGA CNTY N Y 8.00% 12-15-96 CALL 12-15-89@101.75 CALL 12-15-90 @101.5		1	103.582	25895.50	
	25000		SUFFOLK CNTY N Y AUTH WTRWKS REV 6.30% 6-1-2000 REGD REF SER W DD 11-1-86FC 6-1-87 CALL 6-1-96 @ 102		1	92.040	23010.00	

YOUR MONEY MARKET FUND INCL DIV REINVEST
BALANCE AS OF 04/28/1988 IS - - - - $12,110.77

SCHEDULE C

ROBERT P. and BEVIN D. PATTERSON

REAL ESTATE OWNED

Jointly owned family homestead
Cold Spring, NY
Est. $3,000,000

UNLISTED SECURITIES

Shares in Coop Apt. - 55 East End Avenue - owned by Bevin D. Patterson - Under contract for sale. Gross price after costs of sale Est. $350,000.

AO-10
Rev. 8/87

FINANCIAL DISCLOSURE REPORT

Annual Report Due by May 15 from Judicial Officers and certain Judicial Employees (28 USCA App. 1, §§ 301-09)

Person Reporting (Last name, first, middle initial) PATTERSON, ROBERT P., JR.	Court or Organization Proposed Appointment United States District Court	Date of Report June 15, 1988
Title Proposed Appointment United States District Judge	Date of Entry/Nomination/Termination (only if initial or final report)	Reporting Period (Calendar year, or inclusive dates)
Home or office address Home: 55 East End Avenue New York, NY 10028	Office: 30 Rockefeller Plaza New York, NY 10112	

IMPORTANT NOTES: *Please read the instructions accompanying this form. The report should include information pertaining to your spouse and dependent children, if any. Attach additional sheets if needed, identifying each attachment by showing your name, the date of the report, and the section(s) being completed.* **Complete all sections, checking the NONE box for each section where you have no reportable information.** *Compare and reconcile this report with last year's and list items in the same order as last year. Type or print clearly. Sign on last page.*

I. POSITIONS. *(Reporting individual only; see pp. 15-16 of Instructions.)*

☐ NONE (No reportable positions)

POSITION	NAME OF ORGANIZATION/ENTITY
Partner	Patterson, Belknap, Webb & Tyler 30 Rockefeller Plaza, New York, NY 10112
Real Estate Salesperson (S)	Jonathan McCann & Associates 20 East 53rd St., New York, NY 10022
Plus RIDER A	

II. AGREEMENTS. *(Reporting individual only; see p. 17 of Instructions.)*

☐ NONE (No reportable agreements)

DATE	PARTIES AND TERMS
January 1, 1988	Partners of Patterson, Belknap, Webb & Tyler Partnership Agreement (share of income and termination rights)
November 1, 1975	Partners of Patterson, Belknap, Webb & Tyler Pension (agreement on deferred income and retirement rights)
1988	Partners of Patterson, Belknap, Webb & Tyler (Severance Agreement to be negotiated)

III. NON-INVESTMENT INCOME. *(Partial disclosure for spouse; see pp. 18-20 of Instructions.)*

☐ NONE (No reportable non-investment income)

	DATE (Honoraria only)	SOURCE AND TYPE	GROSS INCOME (yours, not spouse's)
1	Patterson, Belknap, Webb & Tyler		$ 229,114
2	Jonathan McCann & Associates (S)		$ 42,064
3	See Rider B	(Payments received and endorsed over to Patterson, Belknap, Webb & Tyler)	$ 45,804.84
4			$
5			$

FINANCIAL DISCLOSURE REPORT (cont'd)

Name of Person Reporting: ROBERT P. PATTERSON, JR.

Date of Report: June 15, 1988

IV. REIMBURSEMENTS and GIFTS--transportation, lodging, food, entertainment.

(Includes those to spouse and dependent children; see pp. 20-22 of Instructions.)

☐ NONE (No such reportable reimbursements or gifts)

	SOURCE	DESCRIPTION
1	Not applicable	
2		
3		
4		
5		
6		
7		
8		

V. OTHER GIFTS.

(Includes those to spouse and dependent children; see pp. 20-22 of Instructions.)

☒ NONE (No such reportable gifts)

	SOURCE	DESCRIPTION	VALUE
1			$
2			$
3			$
4			$

VI. LIABILITIES.

(Includes those of spouse and dependent children; see pp. 22-24 of Instructions.)

☐ NONE (No reportable liabilities)

	CREDITOR	DESCRIPTION	VALUE CODE*
1	Patterson, Belknap, Webb & Tyler	Loan - PBW&T Profit Sharing Plan	L
2	Chemical Bank	Coop Loan	O
3	John Hancock, New England Life, National Life Insurance, Veterans Administration	Insurance Policy loans	M
4			
5			
6			
7			

* VALUE CODES:				
	J=$0 to $1,000	K=$1,001 to $5,000	L=$5,001 to $15,000	M=$15,001 to $50,000
	N=$50,001 to $100,000	O=$100,001 to $250,000	P=over $250,000	

FINANCIAL DISCLOSURE REPORT (cont'd)

Name of Person Reporting	Date of Report
ROBERT P. PATTERSON, JR.	June 15, 1988

VII. INVESTMENTS and TRUSTS--income, value, transactions. *(Includes those of spouse; partial disclosure for dependent children; see pp. 24-35 of Instructions.)*

		A. Description of Assets (including trust assets)	B. Income during period		C. Gross value at end of period		D. Transactions during period (Reporting individual and spouse)				
		Place "(X)" after each asset exempt from prior disclosure.	Amt. Code[1] (A-H)	Type (e.g., div.)	Value Code[2] (J-P)	Value Method Code[3] (Q-W)	Type (e.g., sold)	If not exempt from disclosure: Date: Month-Day	Value Code[2] (J-P)	Gain Code[1] (A-H)	Identity of buyer/seller (if private transaction)
		☐ NONE (No reportable income, assets, or transactions)									
1.	1	Patterson, Belknap, Webb & Tyler Profit Sharing		--	P	T					
	2	Plan for Partners and Staff Members (H)									
	3										
2.	4	Patterson, Belknap, Webb & Tyler Capital			N	T					
	5										
3.		Weiss Peck & Greer (H)	E	Int.	O	T					
	6			Int.							
4.		Weiss Peck & Greer (S)	F	Div.	P	T					
5.	7	Coop Apt. - 55 East End Avenue (S)	A	--	P	W					
6.	8	Fair Oaks Farm Cold Spring, NY (H)(S)	A	--	P	W					
	9										
7.		IRA Accounts (H)+(S)	B		J	U					
	10	M. Kimelman & Co. Schedules A & B					Rider C				
	11	Attached as Rider C									
	12										
	13										
	14										
	15										
	16										
	17										
	18										
	19										
	20										

1 Income/Gain Codes:	A = exempt ($0 to $100)	B = $101 to $1,000	C = $1,001 to $2,500	D = $2,501 to $5,000
	E = $5,001 to $15,000	F = $15,001 to $50,000	G = $50,001 to $100,000	H = over $100,000
2 Value Codes:	J = exempt ($0 to $1,000)	K = $1,001 to $5,000	L = $5,001 to $15,000	M = $15,001 to $50,000
	N = $50,001 to $100,000	O = $100,001 to $250,000	P = over $250,000	
3 Value Method Codes:	Q = Appraisal	R = Cost (real estate only)	S = Assessed value	T = Cash/market
	U = Book value	V = Other	W = Estimated	

FINANCIAL DISCLOSURE REPORT (cont'd)

Name of Person Reporting	Date of Report
ROBERT P. PATTERSON, JR.	June 15, 1988

VIII. ADDITIONAL INFORMATION or EXPLANATIONS. *(Indicate section of Report.)*

☐ **Check to affirm that differences in investments from those reported in prior year are exempt from disclosure.**

IX. CERTIFICATION.

In compliance with the provisions of 28 U.S.C. § 455 and of Advisory Opinion No. 57 of the Advisory Committee on Judicial Activities, and to the best of my knowledge at the time after reasonable inquiry, I did not perform any adjudicatory function in any litigation during the period covered by this report in which I, my spouse, or my children had a financial interest, as defined in Canon 3C(3)(c), in the outcome of such litigation.

I certify that all information given above (including information pertaining to my spouse and dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

Signature ____________ Date June 11 1988

NOTE: ANY INDIVIDUAL WHO KNOWINGLY AND WILFULLY FALSIFIES OR FAILS TO FILE THIS REPORT MAY BE SUBJECT TO CIVIL AND CRIMINAL SANCTIONS (28 U.S.C.A. APP. I, § 304, AND 18 U.S.C. § 1001.)

FILING INSTRUCTIONS:

1. *Mail signed original and 4 additional copies to:*

   Judicial Ethics Committee
   Administrative Office of the
   United States Courts
   Washington, DC 20544

2. *Deliver one copy to the Clerk of the Court on which you sit or serve. (Judicial employees not associated with a specific court, such as employees of the Administrative Office and the Federal Judicial Center, need not file a copy with any court.)*

ROBERT P. PATTERSON, JR. June 15, 1988

JUDICIAL ETHICS COMMITTEE

FINANCIAL DISCLOSURE REPORT

RIDER A

Trustee and Chairman
William T. Grant Foundation
515 Madison Avenue
New York, NY 10022-5403
212-752-0071

Trustee and Treasurer
New School for Social Research
66 West 12th Street
New York, NY 10011
212-715-9240

Director
The Legal Aid Society
15 Park Row
New York, NY 10038
212-577-3300

Chairman
Prisoners' Legal Services of New York
105 Chambers Street
New York, NY 10007
212-513-7373

Trustee and Vice President
The New York Farmers
c/o Oakleigh B. Thorne, Secretary/Treasurer
1633 Broadway
New York, NY 10019
212-246-5070

Trustee
Vera Institute of Justice
377 Broadway
New York, NY 10013
212-334-1300

Director
    Francis Asbury Palmer Fund
    c/o William A. Chisolm, Treasurer
    47 East 88th Street
    New York, NY 10028
    212-348-3100

Trustee
    George C. Marshall Foundation
    P.O. Box 1600
    Lexington, Virginia 24450-1600
    703-463-7103

Trustee
    Trust U/I Marguerite B. Blodgett for
    the benefit of Marguerite B. Blodgett

Trustee
    Trust under will of
    Lily Carstairs Saportas

Trustee
    Trust under the will of
    Margaret H. Bailie for
        Martha Bailie
        Joanna B. Gunderson
        Susanah B. Trautman
        Bruce D. Bailie
        John M. Bailie
        Margaret C. Bailie

Trustee
    Trust for benefit of
    William T. Blodgett

Trustee
    Trust for benefit of
    Justine D. Blodgett

Trustee
    Trusts under will of
    Lillian B. Hodson for benefit of
        Anne Hynson
        Mary Hynson
        Sara P. H. Hopkins
        Doris B. Swann

Trustee
    U/I Gloria Stowell
    for benefit of
        Philip F. Miller III
        Gloria Miller
        Elizabeth Miller

Trustee
    Trust under will of Jane Zander
    for benefit of
        W. D. Zander
        Florence D. Trible
        Elizebeth Trible
        Annadelia Trible

Executor
    Estate of Margaret W. Patterson

Member - House of Delegates
    New York State Bar Association
    One Elk Street
    Albany, NY 12207

Chairman - Committee on Legal Problems
  of the Homeless
    Association of the Bar of the City
      of New York
    42 West 44th Street
    New York, NY 10036

ROBERT P. PATTERSON, JR. June 15, 1988

JUDICIAL ETHICS COMMITTEE

FINANCIAL DISCLOSURE REPORT

RIDER B

	Payments Rec'd and Endorsed Over to PBW&T
Trustee Trust U/I Marguerite B. Blodgett for the benefit of Marguerite B. Blodgett	$ 5,359.39
Trustee Trust under will of Lily Carstairs Saportas	596.10
Trustee Trust under the will of Margaret H. Bailie for Martha Bailie Joanna B. Gunderson Susanah B. Trautman Bruce D. Bailie John M. Bailie Margaret C. Bailie	17,237.87
Trustee Trusts under will of Lillian B. Hodson for benefit of Anne Hynson Mary Hynson Sara P. H. Hopkins Doris B. Swann	2,339.53

Trustee U/I Gloria Stowell for benefit of Philip F. Miller III Gloria Miller Elizabeth Miller		16,702.00
Trustee Trust under will of Jane Zander for benefit of W. D. Zander Florence D. Trible Elizebeth Trible Annadolia Trible		3,570.00
	Grand Total	$45,804.89

Kider Schedule C

REPORT NAME: CAPGAINS
REPORT DATE: 12/31/87

M. KIMELMAN & CO.
SCHEDULE OF REALIZED GAINS AND LOSSES
FROM JAN. 1, 1987 TO DEC 31, 1987

PAGE 1

Cleared Through Weiss Peck + Greer.

ACCOUNT: 04703550 ROBERT P PATTERSON JR

SHARES	SECURITY	DATE BOUGHT	DATE SOLD	COST	PROCEEDS	SHORT TERM GAIN OR (LOSS)	LONG TERM GAIN OR (LOSS)
10,000	NEW YORK ST DA CITY UNIV REV 4.500% 07/01/1998	01/06/87	05/08/87	8,733.50	8,625.00	(108.50)	
15,000	NEW YORK ST DA CITY UNIV REV 4.500% 07/01/1999 C87	01/06/87	05/28/87	12,799.50	13,162.50	363.00	
				21,533.00	21,787.50	254.50	

Kidder: Cholet

REPORT NAME: CAPGAINS
REPORT DATE: 01/06/88

M. KIMELMAN + CO.
SCHEDULE OF REALIZED GAINS AND LOSSES
FROM JAN 1, 1987 TO DEC 31, 1987

PAGE 1

Cleared Through Weiss Peck + Greer

ACCOUNT: 04703549 BEVIN D PATTERSON

SHARES	SECURITY	DATE BOUGHT	DATE SOLD	COST	PROCEEDS	SHORT TERM GAIN OR (LOSS)	LONG TERM GAIN OR (LOSS)
10,000	NEW YORK ST MTG AGY 9.100% 04/01/1995	09/27/84	01/15/87	9,975.00	10,000.00		25.00
300	FORD MTR CO DEL	05/29/86	01/26/87	16,294.56	21,812.56 ✓		5,518.00
500	FIRST CHICAGO CORP	05/29/86	03/20/87	17,550.22	14,416.05 ✓		(3,134.17)
1,500	MATERIALS RESH CORP	06/24/86	04/03/87	14,935.47	15,182.82 ✓		247.35
68	EASTMAN KODAK CO	05/25/62	04/27/87	324.01	4,855.35 ✓		4,531.34
100	EASTMAN KODAK CO	05/25/62	04/27/87	476.49	7,140.24 ✓		6,663.75
100	JOHNSON & JOHNSON	02/11/87	04/27/87	7,987.50	8,582.21 ✓	594.71	
204	ALLEGHANY CORP DEL	02/02/87	07/14/87	9,044.00	15,761.46 ✓	6,717.46	
200	CYCLOPS INDS INC	07/06/87	12/09/87	7,879.60	3,949.22 ✓	(3,930.38)	
96	CYCLOPS INDS INC	07/24/87	12/09/87	4,466.00	1,895.62 ✓	(2,570.38)	
1,500	CYTOGEN CORP	05/27/87	12/11/87	12,983.40	7,923.32 ✓		(5,060.08)
300	SQUARE D CO	06/11/87	12/11/87	16,515.60	13,184.55 ✓	(3,331.05)	
400	STEVENS J P & CO INC	01/28/87	12/11/87	16,770.00	9,891.22 ✓		(6,878.78)
				135,201.85	134,594.62	(2,519.64)	1,912.41

ABA

AMERICAN BAR ASSOCIATION

Standing Committee on
Federal Judiciary
1800 M Street, NW
Washington, DC 20036
(202) 331-2210

CHAIRMAN
Harold R. Tyler, Jr.
30 Rockefeller Plaza
New York, NY 10112

FIRST CIRCUIT
Ralph I. Lancaster, Jr.
One Monument Square
Portland, ME 04101

SECOND CIRCUIT
William E. Willis
125 Broad Street
New York, NY 10004

THIRD CIRCUIT
Jerome J. Shestack
Suite 3600
1600 Market Street
Philadelphia, PA 19103

FOURTH CIRCUIT
James A. Howard, Sr.
1410 First Virginia Bank Tower
101 St. Paul's Boulevard
Norfolk, VA 23510

FIFTH CIRCUIT
Lloyd Lochridge
Suite 1300
919 Congress Avenue
Austin, TX 78701

SIXTH CIRCUIT
John C. Elam
52 East Gay Street
Columbus, OH 43215

SEVENTH CIRCUIT
Joan M. Hall
Suite 4300
One IBM Plaza
Chicago, IL 60611

EIGHTH CIRCUIT
James W. Hewitt
Post Office Box 80268
1815 Y Street
Lincoln, NE 68501

NINTH CIRCUIT
J. David Andrews
1900 Washington Building
Seattle, WA 98101

Samuel L. Williams
45th Floor
355 South Grand Avenue
Los Angeles, CA 90071

TENTH CIRCUIT
James A. Clark
Suite 1100
303 East 17th Avenue
Denver, CO 80203

ELEVENTH CIRCUIT
M. Roland Nachman, Jr.
Post Office Box 78
2 Dexter Avenue
Montgomery, AL 36101

DISTRICT OF COLUMBIA
CIRCUIT
James J. Bierbower
International Square
Suite 1275
1875 I Street, NW
Washington, DC 20006

FEDERAL CIRCUIT
John D. Lane
Suite 600
1666 K Street, NW
Washington, DC 20006

BOARD OF GOVERNORS
LIAISON
Sharp Whitmore
2805 Gird Road
Fallbrook, CA 92028

STAFF LIAISON
Irene R. Emsellem
2nd Floor, South Lobby
1800 M Street, NW
Washington, DC 20036
(202) 331-2210
ABA/NET: ABA 461

June 24, 1988

CONFIDENTIAL

The Honorable Joseph R. Biden, Jr.
Chairman, United States Senate
Committee on the Judiciary
Washington, D.C. 20510

Re: ROBERT P. PATTERSON, JR.
United States District Court
for the Southern District of New York

Dear Senator Biden:

Thank you for affording this Committee an opportunity to express an opinion pertaining to the nomination of Robert P. Patterson, Jr. for appointment as Judge of the United States District Court for the Southern District of New York.

A substantial majority of our Committee is of the opinion that Mr. Patterson is "Well Qualified" for this appointment. The minority found him to be Exceptionally Well Qualified.

Sincerely,

John D. Lane
Acting Chairman

cc: All Committee Members

THE ASSOCIATION OF THE BAR
OF THE CITY OF NEW YORK
42 WEST 44TH STREET
NEW YORK 10036

COMMITTEE ON THE JUDICIARY

VICTOR A. KOVNER
CHAIR
30 ROCKEFELLER PLAZA
NEW YORK, 10112-0150
(212) 489-8230

ROBERT D. BALIN
SECRETARY
30 ROCKEFELLER PLAZA
NEW YORK 10112-0150
(212) 489-8230

July 8, 1988

Senator Joseph Biden, Jr.
Senate Committee on the Judiciary
Washington, D.C. 20510

Dear Senator Biden:

I am pleased to inform you that the Committee on the Judiciary of the Association of the Bar of the City of New York has found Robert P. Patterson APPROVED for appointment to the United States District Court for the Southern District of New York.

Very truly yours,

Robert D. Balin
Secretary

RDB/mlc

RANDALL R. RADER

Birth:	April 21, 1949	Hastings, Nebraska
Legal Residence:	Virginia	
Marital Status:	Married	Sheryl Fluckiger Rader four children
Education:	1967 - 1968 1972 - 1974	Brigham Young University B.A. degree, *magna cum laude*
	1974 - 1978	George Washington University National Law Center J.D. degree
Bar:	1978	District of Columbia
Experience:	1975 - 1978	Legislative Assistant to Congresswoman Virginia Smith U.S. House of Representatives
	1978 - 1981	Legislative Director & Counsel to Congressman Philip Crane House Ways and Means Committee U. S. House of Representatives
	1981 - 1986	Chief Counsel and Counsel to Senator Orrin Hatch Subcommittee on the Constitution U. S. Senate Judiciary Committee
	1987 - present	Chief Counsel/Staff Director (Minority) and Counsel to Senator Orrin Hatch Subcommittee on Patents, Copyrights, and Trademarks U.S. Senate Judiciary Committee
Office:	229 Hart Building Washington, D.C. 20510 202 224-7703	
Home:	9205 Fox Lair Drive Burke, Virginia 22015	

To be a Judge of the United States Claims Court

QUESTIONNAIRE FOR JUDICIAL NOMINEES

I. BIOGRAPHICAL

1. Full name (include any former names used.)

Randall Ray Rader (Randy)

2. Address: List current place of residence and office address(es).

Home: 9205 Fox Lair Drive
Burke, Virginia 22015 (703)425-5063

Office: U.S. Senate Judiciary Committee
229 Hart Building
Washington, D.C. 20510 (202)224-7703

3. Date and place of birth.

April 21, 1949 - Hastings, Nebraska

4. Marital Status (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).

Married. Sheryl Fluckiger Rader, housewife, newspaper delivery for the Washington Times.

5. Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.

Brigham Young University - Provo, Utah
Attended: 1967-1968 (left to go on mission for LDS church.)
1972-1974
Degree: received a B.A. degree, magna cum laude

George Washington University National Law Center - D.C.
Attended: 1974-1978
Degree: received J.D. degree, with honors

6. Employment Record: List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including firms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.

1975-1978: U.S. House of Representatives, Legislative Assistant to Congresswoman Virginia Smith. In this capacity, I formulated legislation, committee and floor amendments, and policy statements. I also advised a new member on House floor and committee procedures.

1978-1981: U.S. House of Representatives, House Ways and Means Committee. Legislative Director and counsel to Congressman Philip M. Crane. In this capacity, I prepared the member of Congress for Ways and Means Committee issues. Accordingly, I drafted legislative amendments. In addition, I researched and wrote floor amendments, speeches, policy papers, press releases, and magazine articles for a Congressman.

1981-1986: U.S. Senate Judiciary Committee, Subcommittee on the Constitution. Chief Counsel and counsel to Senator Orrin G. Hatch. In this capacity, I directed the legislative process to enactment for several current laws, including the Bail Reform Act, P.L. 98-473; the Federal Firearm Owners Protection Act, P.L. 99-308; the Freedom of Information Reform Act, P.L. 99-570; the Bicentennial of the Constitution Act, P.L. 98-101; the Trademark Clarification Act, P.L. 98-620; the Trademark Protection Act, P.L. 97-296; and others. I was also a key participant in the adoption of other legislation related to Judiciary matters, including the Anti-Drug Abuse Act, P.L. 99-570; the Missing Children Act, P.L. 97-292; the insanity defense, sentencing, and other criminal law reforms, P.L. 98-473; the collective bargaining bankruptcy amendments, P.L. 98-353; the bankruptcy reforms, P.L. 99-554; the Civil Rights Commission Reformation Act; P.L. 98-183; and others. In sum, I played a significant role in all Senate Judiciary Committee matters in the 97th-99th Congresses, particularly constitutional amendment proposals like the balanced budget amendment and the school prayer amendment. Thus, I wrote 15 Judiciary Committee reports (over 700 pages) for bills approved by Committee, organized nearly 30 Committee hearings producing nearly 20 volumes of record, and coordinated Senate confirmation efforts for dozens of federal judges and executive branch officers, including Chief Justice Rehnquist, Justice Scalia, Justice O'Connor, and others.

1987-Present: U.S. Senate, Senate Judiciary Committee, Subcommittee on Patents, Copyrights, and Trademarks. Chief Counsel/Staff Director (minority) and counsel to Senator Orrin G. Hatch. In this capacity I have been a participant in all legislative activities of the Senate Judiciary Committee in the 100th Congress, including the Process Patents bill, intellectual property protections in the trade bill, the Fair Housing Act, as well as various criminal and antitrust law reforms. In addition, I coordinated strategy on judicial nominations, including two Supreme Court nominees and various other federal judges.

7. Military Service: Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.

U.S. Army Reserves, 1971-1977
Rank: Sp 4 or 5
Serial Number: 540-62-0096
Honorable Discharge

8. Honors and Awards: List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.

1) Federal Bar Association's Outstanding Younger Federal Lawyer Award, 1983.
2) Dean's Scholarship, Brigham Young University, 1973-1974.
3) Phi Kappa Phi, 1973.
4) Magna Cum Laude with B.A., 1974, Brigham Young University.
5) With Honors, J.D., George Washington University National Law Center.

9. Bar Associations: List all bar associations, legal or judicial-related committees or conferences of which you are or have been a member and give the titles and dates of any offices which you have held in such groups.

1) Adjunct faculty, the Federal Civil Practice Institute, South Texas College of Law and Houston Chapter of the Federal Bar Association, Houston, Texas. 1984-1986.
2) Chairman, Criminal Law Committee, Federal Bar Association. 1982-1986.
3) Vice-Chairman, Information Law Committee, Federal Bar Association. 1984-1986.
4) Treasurer, Capitol Hill Chapter, Federal Bar Association. 1983-1984.
5) Senate Representative for Capitol Hill Chapter of the Federal Bar Association. 1982-present.

10. Other Memberships: List all organizations to which you belong that are active in lobbying before public bodies. Please list all other organizations to which you belong.

1) L.D.S. Social Services (an adoption and human services agency). Board member and legal advisor. 1986-present.
2) Courts Royal, member. 1985-present.
3) Shirley Racquet Club, member. 1984-1985.
4) Wakefield Ward, Fairfax Stake, Church of Jesus Christ of Latter-day Saints.

5) Federal Bar Association, Capitol Hill Chapter.
6) Fox Lair Community Association (homeowners association).

11. Court Admission: List all courts in which you have been admitted to practice, with dates of admission and lapses if any such memberships lapsed. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.

1) District of Columbia Court of Appeals Bar, admitted 1978.
2) Supreme Court Bar, admitted 1984.

12. Published Writings: List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.

PUBLICATIONS:

"The 1984 Comprehensive Crime Control Act: Changing the Course of federal Criminal Law", Federal Bar News and Journal, November 1986.

"42 U.S.C. 1983, The Civil Rights Action: Legislative and Judicial Directions," 15 Cumberland Law Review v. 2, (1985).

"Church, State, and Public Policy under the First Amendment," 5 Lincoln Review 15 (winter, 1985).

"The Fee Awards Act of 1976: Examining the Foundation for Legislative Reform of Attorney Fees Shifting", 18 John Marshall Law Review 77 (1984).

"Reforming the Exclusionary Rule", 31 Federal Bar News and Journal 250 (1984).

Rader and McGuigan, editors, Criminal Justice Reform, (Regnery Gateway, Chicago)(1983)(273 page book comprised of 17 articles written by Attorney General Wm. F. Smith, Presidential Counsel and later Attorney General Edwin Meese, F.B.I. Director Webster, four Senators, and various law professors and criminologists.)

"Bailing Out a Failed Law: The Constitution and Pretrial Detention", Criminal Justice Reform 91 (1983).

"Criminal Justice Reform: A Blueprint", Criminal Justice Reform 1, (1983).

"Legislating a Remedy for the Fourth Amendment", 12 South Texas Law Journal 585 (1982).

"Important Changes for the Freedom of Information Act", Chicago Daily Law Bulletin, (1982).

Rader and McGuigan, editors, A Blueprint for Judicial Reform (Washington, D.C.)(1981)(382-page book comprised of 22 chapters written by former Senator Sam Ervin, four current senators, state Attorney General and later Governor John Ashcroft, and other law professors and legal scholars).

"The Burdens of Cutting Back Government", The Wall Street Journal, October 17, 1979.

PUBLIC ADDRESSES:

"Selecting Supreme Court Justices", Cornell University Law School Symposium, Ithaca, New York, November 19, 1987.

"Federal Court Jurisdiction", Lead Address at District of Columbia Circuit Judicial Conference, 1982, published at 96 F.R.D. 245, 255 (1982).

"The First Amendment and Access to Court Records", American Bar Association, 1986 Annual Meeting, August, New York.

"Congressional Authority and Federal Courts," Third Circuit Judicial Conference, 1982.

"The Case for Amending the Freedom of Information Act", American Enterprise Institute Conference, Catholic University Law School, October 1983.

"Criminal Justice Reform", address at Washington Criminal Law Reform Conference, published at "A Conference on Criminal Justice Reform", 20 (Institute for Government and Politics, Washington, D.C.) 1983.

"Improving the Freedom of Information Act", American Bar Association Convention, 1983, Atlanta, Georgia; National Conference of Secretaries of State, Biloxi, Louisiana, 1982.

"Amending the Constitutional Tort", American Bar Association Convention, 1983.

"Amendment of 42 U.S.C. Sections 1983 and 1988", keynote address of ninth annual national convention of the National Institute of Municipal Law Officers, August 17, 1985.

"The Constitution and School Desegregation Orders", keynote address of ninth annual national convention of the National Association of Neighborhood Schools, Cleveland, Ohio, August 17, 1985.

13. Health: What is the present state of your health? List the date of your last physical examination.

Excellent. February of 1988, Dr. Marvin Q. Sanner.

14. Judicial Office: State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

None.

15. Citations: If you are or have been a judge, provide: (1) citations for the ten most significant opinions you have written; (2) a short summary of and citations for all appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings, and (3) citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, please provide copies of the opinions.

None.

16. Public Office: State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.

None.

17. Legal Career:

a) Describe chronologically your law practice and experience after graduation from law school including: (1) whether you served as clerk to a judge, and if so, the name of the judge, the court, and the dates of the period you were a clerk; (2) whether you practiced alone, and if so, the addresses and dates; (3) the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each.

-- 1975-1978: Legislative Assistant to Congresswoman Virginia Smith of the U.S. House of Representatives. During this time I formulated legislation, committee and floor amendments, and policy statements. I also advised a new member of Congress on House floor and committee procedures.

-- 1978-1981: Legislative Director and counsel on House Ways and Means Committee issues to Congressman Philip M. Crane of the U.S. House of Representatives. In this capacity I prepared the Member of Congress for Ways and Means Committee issues. Accordingly, I drafted legislative amendments, researched and wrote floor amendments, speeches, policy papers, press releases, and magazine articles for a Congressman.

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-- 1986-Present: Chief Counsel/Staff Director of the Subcommittee on Patents, Copyrights and Trademarks (minority), and counsel to Senator Orrin G. Hatch. In this capacity, I have been a key participant in all legislative activities of the Senate Judiciary Committee in the 100th Congress, including the Process Patents bill, intellectual property protections in the Trade bill, the Fair Housing Act, as well as various criminal and antitrust law reforms. In addition, I coordinated strategy on judicial nominations, including two Supreme Court nominees and various other federal judges.

b)(1) What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years? (2) Describe your typical former clients, and mention the areas, if any, in which you have specialized.

-- see question 17(a), above.

c)(1) Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates. (2) What percentage of these appearances was in: federal courts, state courts of record, other courts. (3) What percentage of your litigation was: civil, criminal. (4) State the number of cases in courts of record you tried to verdict or judgment rather than settled, indicating whether you were sole counsel, chief counsel, or associate counsel. (5) What percentage of these trials was: jury, non-jury.

-- Because my legal career has taken place to date in the legislative branch, I have not appeared in court.

18. Litigation: Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case: (a) the date of representation, (b) the name of the court and the name of the judge or judges before whom the case was litigated, and (c) the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

I have not appeared in court. Some of my legislative duties have, however, been adjudicative in nature. Service on the special impeachment committee for Judge Harry Claiborne and extensive work on the expulsion of Senator Harrison "Pete" Williams are examples.

19. Legal Activities: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived).

Of those legal activities described in the answer to question 17, the most significant may well be the Senate floor debates on constitutional issues. In addition to anticipating complex issues of constitutional law and drafting responsive speeches for several Senators, this also demanded the ability to analyze unexpected amendments and procedural strategies and devise -- without delay or time for research -- responsive amendments or strategies. These debates, involving constitutional amendment proposals to balance the federal budget, to overturn Supreme Court holdings, or involving interpretations of the advice and consent clause or the foreign affairs powers of the President, often stretched for days at a time. These periods were genuine tests of legal skill, when questions of enormous national significance often hung in the balance. Another significant experience was participation in several House-Senate conference committees. I was called upon in these conferences to draft binding words of law and legislative history on the spot.

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients, or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.

Not applicable.

2. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts of interest during your initial service with the court? If so, explain.

At this time, I do not anticipate any potential conflicts of interest. If, however, a conflict of interest -- real or apparent -- should arise, I will counsel with my judicial peers about it. In addition, I will consult the applicable ABA and judicial conference guidelines. Based on these consultations, I will either recuse myself of dissolve any relationship likely to cause a potential conflict.

3. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

No.

4. List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding $500 or more (if you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here).

See attached statement.

5. Please complete the attached financial net worth statement in detail (add schedules as called for).

See attached statement.

CONFIDENTIAL FINANCIAL STATEMENT

NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS		
Cash on hand and in banks	20,823	-
U.S. Government securities—add schedule		
Listed securities—add schedule		
Unlisted securities—add schedule		
Accounts and notes receivable:		
Due from relatives and friends		
Due from others		
Doubtful		
Real estate owned—add schedule	170,000	-
Real estate mortgages receivable		
Autos and other personal property	30,000	-
Cash value—life insurance		
Other assets—itemize:		
IRA's	12312	71
Civil Service Retirement	18,190	-
Total assets	252,825	71

LIABILITIES		
Notes payable to banks—secured	9000	-
Notes payable to banks—unsecured		
Notes payable to relatives		
Notes payable to others		
Accounts and bills due		
Unpaid income tax		
Other unpaid tax and interest		
Real estate mortgages payable—add schedule	61,000	-
Chattel mortgages and other liens payable		
Other debts—itemize:		
VISA	200	-
Total liabilities	70,200	-
Net worth	162,935	-
Total liabilities and net worth	303,335	-

CONTINGENT LIABILITIES	
As endorser, comaker or guarantor	No
On leases or contracts	No
Legal Claims	No
Provision for Federal Income Tax	No
Other special debt	No

GENERAL INFORMATION	
Are any assets pledged? (Add schedule.)	No
Are you defendant in any suits or legal actions?	No
Have you ever taken bankruptcy?	No

6. Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

No.

III. GENERAL (PUBLIC)

1. An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

Since 1986, I have served as a member of the board of directors of the L.D.S. Social Services agency. This agency, located in Richmond and serving the entire state of Virginia, primarily arranges adoptions and counsels unwed mothers. It also provides hundreds of hours of service in areas such as marriage counselling, mental and personality disorders, and other forms of human services. I have spent dozens of hours each year attending board meetings, counselling the agency on state accreditation issues, scheduling appointments for clients in Northern Virginia, and assessing the needs and resources of the agency.

Also, since 1982, I have participated actively in the Federal Bar Association's Capitol Hill Chapter. The Chapter and the Association sponsor many continuing legal education programs. I have often helped organize these programs. My service as Treasurer also demanded attendance at monthly meetings and considerable bookkeeping and paperwork responsibilities. I have spent many rewarding hours in service to the Federal Bar Association.

2. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion. Do you currently belong, or have you belonged, to any organization which discriminates -- through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What have you done to try to change these policies?

No.

3. Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, did it recommend your nomination? Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and interviews in which you participated).

I am unaware of any selection commission for the U.S. Claims Court.

My association with leaders at the Department of Justice had occasionally in the past elicited questions about my qualifications for and interest in judicial service. In late 1987, when seeking nominees for this vacancy, Assistant Attorney General Stephen Markman inquired about my willingness to serve as a judge on the U.S. Claims Court. Accordingly, I sent him a resume and learned several weeks later that the Attorney General and the White House had selected me for the position.

4. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as seeking any express or implied assurances concerning your position on such case, issue, or question? If so, please explain fully.

No.

5. Please discuss your views on the following criticism involving "judicial activism":

The role of the Federal judiciary within the Federal government, and within society generally, has become the subject of increasing controversy in recent years. It has become the target of both popular and academic criticism that alleges that the judicial branch has usurped many of the prerogatives of other branches and levels of government.

Some of the characteristics of this "judicial activism" have been said to include: (a) a tendency by the judiciary toward problem-solution rather than grievance-resolution; (b) a tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals; (c) a tendency by the judiciary to impose broad, affirmative duties upon governments and society; (d) a tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and (e) a tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.

Nearly 13 years of service to the U.S. Congress has taught me a profound respect for the law making process. Based on first-hand experience, I know our laws to be the product of painstaking compromise and balancing by those elected to represent the people of the United States. Accordingly, I would find it incomprehensible that a judge would ever presume to set aside the text and context of the law in favor of extra legal considerations. In my mind, a judge is bound by both oath and office to enforce the law as written.

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